Champion International Corporation *and* Paper, Allied-Industrial, Chemical & Energy Workers International Union, Locals 45 & 56 and National Conference of Firemen & Oilers/SEIU International Union Local 349. Cases 3–CA–21954 and 3–CA–21958

July 14, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On January 5, 2001, Administrative Law Judge Eric M. Fine issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel and Charging Party Paper, Allied-Industrial, Chemical & Energy Workers International Union, Locals 45 & 56 (PACE) filed answering briefs.[1] The Respondent filed a reply brief to PACE's answering brief. PACE filed a limited cross-exception to one of the judge's factual findings.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exception, and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions as discussed below, and to adopt the recommended Order as modified.[3]

We agree with the judge, for the reasons set forth in his decision, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to pay employees in the bargaining unit represented by PACE earned vacation pay in accordance with the collective-bargaining agreement between the Respondent and PACE. For the reasons set forth below, we further agree with the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing preconditions for receipt of any severance pay by unit employees represented by PACE and Firemen & Oilers and by failing to satisfy its duty to bargain with those unions about the effects on unit employees of its decision to sell its paper mill in Deferiet, New York.

As fully discussed in the judge's decision, on May 11, 1999,[4] the Respondent informed union officials at the Deferiet mill that the mill was being sold. On the evening of May 11, the Respondent began distributing to unit employees a letter informing them that "to be eligible for severance you must complete the application process" for employment with the purchaser of the Deferiet mill, which process included undergoing drug testing. Stapled to the letter were the application forms for employment with the purchaser of the mill, and a schedule for May 12 and 13 directing employees to report to a local hotel for the application process including drug testing. The parties' respective collective-bargaining agreements did not entitle the Respondent to engage in across-the-board drug testing of unit employees. The Respondent required employees to sign for receipt of both the letter and the employment application forms.

The record shows that the Respondent implemented these preconditions for employees' receipt of any severance pay—applying for employment and undergoing drug testing—without providing the Unions advance notice and an opportunity to bargain.[5] As the judge found, "[t]here was no time here for the Unions to effectively consult with employees or to engage in meaningful bargaining over the Respondent's implementation of its preconditions for severance pay." The record thus fully supports the judge's key finding that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing preconditions for receipt by unit employees of any severance pay. We thus agree with the judge, as set forth in his decision, that the Respondent failed to accord the Unions an opportunity to engage in meaningful effects bargaining in light of its unilateral implementation of preconditions for receipt of severance pay.[6]

[1] Charging Party National Conference of Firemen & Oilers/SEIU International Union Local 349 (Firemen & Oilers) adopted the answering brief filed by PACE.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We have modified the recommended Order to accord with our decision in *Ferguson Electric Co.*, 335 NLRB No. 15 (2001). We have substituted a new notice in accordance with our recent decision in *Ishikawa Gasket America, Inc.*, 337 NLRB No. 29 (2001).

[4] All dates are in 1999.

[5] Union officials learned of the implementation of the preconditions only by the Respondent's distribution to employees of the letter and employment application forms on the evening of May 11.

[6] In agreeing with the judge that the Respondent failed to satisfy its obligation to bargain on effects, we do not rely on the judge's finding that the Respondent delayed furnishing the Unions with requested information.

In finding that the Respondent did not cure its unlawful failure to provide the Unions with a meaningful opportunity to engage in effects bargaining, we do not pass on the validity of *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). We do, however, agree with the judge that the Respondent's June 10, 1999 memo did not cure the Respondent's unlawful conduct.

We do not find a separate violation based on the theory that the Respondent engaged in unlawful direct dealing. This matter was neither alleged in the consolidated complaint, nor did the General Counsel subsequently amend the complaint to include this allegation. The complaint alleged a unilateral change. That change was set forth in Respondent's May 11 letter. The complaint does not allege that the May 11 letter was distributed to employees or that any such distribution was a "direct dealing" 8(a)(5) allegation.

A unilateral change violation is different from a direct dealing violation. The former involves a change in terms and conditions of employment. It does not depend on whether there was a communication to employees. The latter involves dealing with employees (bypassing the Union) about a mandatory subject of bargaining. It does not depend on whether there has been a change. See *Allied-Signal, Inc*., 307 NLRB 752, 754 (1992) ("Direct dealing with employees goes beyond mere unilateral employer action.").

We recognize that the facts concerning the distribution of the letters were adduced on the record. However, absent a separate allegation, the Respondent could reasonably believe that those facts were relevant to the unilateral change allegation. The Respondent would not know that those facts were intended to prove a separate direct dealing violation. It is axiomatic that a respondent cannot fully and fairly litigate a matter unless it knows what the accusation is. Accordingly, there was no full and fair litigation. See *Mine Workers District 29*, 308 NLRB 1155, 1158 (1992) (mere presentation of evidence relevant to a possible violation of the Act does not satisfy the requirement that matter be "fully and fairly litigated.").

Pergament United Sales v. NLRB, 920 F.2d 130, 136 (2d Cir. 1990), is inapposite. In that case, the complaint alleged an 8(a)(3) discharge, and the Board and court found that *the same discharge* violated Section 8(a)(4). The court noted that both Section 8(a)(3) and (4) turn on motive. By contrast, in the instant case, as discussed above, the change itself and the direct dealing are two different things, and the allegations and defenses are different. As the court recognized, "whether a [matter] has been fully and fairly litigated is so peculiarly fact bound as to make every case unique." *Pergament United Sales v. NLRB*, supra, 920 F.2d at 136.

Similarly, *Cardinal Home Products*, 336 NLRB No. 154, slip op. at 4 (2001), does not support our colleague. In that case, the complaint alleged a violation of Section 8(a)(3). The Board found the violation and an independent 8(a)(1) violation. Although the latter was not pled, it was based on the very same facts as the 8(a)(3) violation. As discussed above, that is not the situation here.

For all of the foregoing reasons, we conclude that the Respondent was not placed on notice of the direct dealing allegation. Accordingly, we will not find such a violation.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Champion International Corporation, Syracuse, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(c) and reletter the remaining paragraphs.

2. Substitute the following for paragraph 2(e).

"(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of the records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order."

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. July 14, 2003

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Robert J. Battista, Chairman

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER WALSH, dissenting in part.

I dissent from my colleagues' reversal of the judge's finding that the Respondent violated Section 8(a)(5) and

PACE filed a cross-exception to the judge's factual finding that the Respondent, in its June 8 letter to PACE's counsel, stated that it had provided a copy of the purchase and sale agreement for the Deferiet mill to the NLRB regional office. The record shows that the Respondent only offered to furnish that document to the NLRB regional office upon its request. The record does not establish that the document was actually provided to the Region.

We take administrative notice, at the Respondent's request, of the Board's decision in *Deferiet Paper Co*., 330 NLRB No. 89 (2000) (not reported in bound volumes), and of the Employee Retirement Income Security Act, 29 U.S.C. 1001 et seq. This does not affect the outcome of this case. Finally, we find meritless the Respondent's exception that the judge, at the hearing, erred in disallowing a question regarding the involvement of PACE's counsel in the preparation of the Union's information request letter dated May 25.

(1) of the Act by dealing directly with bargaining unit employees.[1] Although the complaint did not separately allege a direct dealing violation, the judge's finding of such a violation is correct under established Board and court precedent.

As my colleagues explained in a decision issued earlier this year, "It is well settled that the Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is closely connected to the subject matter of the complaint and has been fully litigated." *Cardinal Home Products*, 338 NLRB No. 154, slip op. at 4 (2003) (quoting *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990)). Accord, *Casino Ready Mix, Inc. v. NLRB*, 321 F.3d 1190, 1199–1200 (D.C. Cir. 2003).

Here, the complaint alleges that the Respondent failed to satisfy its obligation to bargain with two Unions over the effects of its decision to sell its paper mill located in Deferiet, New York. Specifically, the complaint alleges, inter alia, that on about May 11, 1999, the Respondent violated Section 8(a)(5) and (1) by unilaterally implementing preconditions for obtaining severance pay for bargaining unit employees. The judge found, and my colleagues agree, that the record solidly supports this complaint allegation. Thus, the record shows that on May 11, 1999, without providing notice to the Unions and an opportunity to bargain, the Respondent distributed a letter to employees establishing two preconditions for employees' receipt of any severance pay: (1) employees had to apply for employment with the purchaser of the mill; and (2) employees had to undergo drug testing. Stapled to the letter were application forms for employment with the purchaser and a schedule directing employees to report to a local hotel for the application process including drug testing. The judge concluded, and again my colleagues agree, that the Respondent violated Section 8(a)(5) and (1) of the Act as alleged by unilaterally instituting these preconditions.

In addition, the judge found that the Respondent's conduct constituted unlawful direct dealing because the Respondent tendered the May 11, 1999 letter directly to employees, without having first presented it to the Unions. The Respondent thereby interjected itself between the employees and their bargaining representatives, and undermined the effects bargaining process with the Unions. Although the complaint did not allege a separate direct dealing allegation, the judge reasoned that finding such an additional violation was proper because "the Respondent's conduct here was part and parcel of its unlawful unilateral change[,] . . . was closely related to that complaint allegation, [and] . . . was fully litigated . . . ." In support, the judge cited *Blue Circle Cement Co.*, 319 NLRB 954, 955, 962 fn. 10 (1995), enfd. in relevant part 106 F.3d 413 (10th Cir. 1997), a case finding an unalleged direct dealing violation under similar circumstances.

Although my colleagues recognize that the facts concerning the judge's direct dealing finding were adduced on the record, they reverse him, asserting that the Respondent was not put on notice that a claim of violation was based on its May 11 distribution of the letter directly to unit employees. As the Second Circuit explained in the *Pergament* case, however, notice does not mean that a respondent must be advised of "the legal theory upon which the General Counsel" relies. 920 F.2d at 135. "Instead, notice must inform the respondent of the acts forming the basis" of the unfair labor practice. Id. In addition, there must be full and fair litigation of the conduct in question. Id. at 136.[2]

Here, these dual requirements were satisfied. First, by virtue of the unilateral change allegation of the complaint, the Respondent knew from the beginning of the proceeding that the legality of its May 11, 1999 letter to employees was in issue. As explained above, it was this very letter (and its attachments), on which the judge relied in finding direct dealing. Therefore, the Respondent had clear notice of the "acts forming the basis" of the direct dealing unfair labor practice. In addition, at the hearing, the Respondent had a fair and full opportunity to offer a legitimate justification for its sending of the letter directly to employees without having first tendered the documents to the Unions. Indeed, although the Respondent argues in its brief that the direct dealing issue was not fully litigated, the Respondent does not state how it would have presented its case differently had the complaint contained a separate direct dealing allegation.

In sum, finding unlawful direct dealing does not violate the Respondent's right to due process where, as here, it was at all times on notice of the acts which formed the basis of the additional unfair labor practice, and the matter was fully litigated. Accordingly, I would adopt the judge's finding of a separate direct dealing violation.

Dated, Washington, D.C. July 14, 2003

Dennis P. Walsh, Member

NATIONAL LABOR RELATIONS BOARD

[1] In all other respects, I agree with my colleagues' decision.

[2] My colleagues err in deeming *Pergament* to be inapposite. *Pergament* requires that the matter at issue be "closely connected" to the subject matter of the complaint, not that the two matters be the same, as the majority suggests.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail to bargain in good faith with Paper, Allied-Industrial, Chemical & Energy Workers International Union, Locals 45 & 56 (PACE) and the National Conference of Firemen & Oilers/S.E.I.U. International Union Local 349 (Firemen & Oilers), concerning the effects on employees represented by those Unions at the Deferiet mill of our decision to sell the Deferiet mill and terminate our employees.

WE WILL NOT unilaterally implement preconditions for obtaining severance pay for employees in the collective-bargaining units represented by PACE and Firemen & Oilers at the Deferiet mill.

WE WILL NOT fail and refuse to pay employees in the PACE collective-bargaining unit at the Deferiet mill earned vacation pay pursuant to Section 17 of our collective-bargaining agreement with PACE.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, upon request, bargain in good faith with PACE and Firemen & Oilers about the effects on unit employees of our decision to sell the Deferiet mill and terminate our employees.

WE WILL, upon request, rescind the preconditions for obtaining severance pay we unilaterally implemented on May 11, 1999.

WE WILL pay employees in the collective-bargaining units represented by PACE and Firemen & Oilers at the time we sold the Deferiet mill limited backpay, plus interest, as required by the National Labor Relations Board.

WE WILL make whole those employees hired by Deferiet Paper Company who had worked for Champion International Corporation in the PACE-represented bargaining unit by the payment of interest on the amounts of vacation pay accrued and owing those employees by Champion International Corporation as of June 12, 1999, until the time of the payment of these moneys to the employees by the Deferiet Paper Company; and by paying vacation pay and interest to any employees in the PACE-represented bargaining unit who were not paid vacation pay by Champion International Corporation or the Deferiet Paper Company for vacation pay owed by Champion International Corporation as of June 12, 1999.

CHAMPION INTERNATIONAL CORPORATION

Michael Israel, Esq., for the General Counsel.
Denis E. Cole, Esq., of Garden City, New York, for the Respondent.
James R. LaVaute, Esq. and *Stephanie A. Miner, Esq.*, of Syracuse, New York, for the Charging Party, Paper, Allied-Industrial, Chemical & Energy Workers International Union, Locals 45 & 56.

DECISION

STATEMENT OF THE CASE

ERIC M. FINE, Administrative Law Judge. This case was tried in Syracuse, New York, on June 7 and 8, 2000. The charge and amended charge in Case 3–CA–21954 were filed by Paper, Allied-Industrial, Chemical & Energy Workers International Union, Locals 45 & 56 (PACE Local 45 and Pace Local 56)[1] on May 28 and September 15, 1999, respectively,[2] and the charge in Case 3–CA–21958 was filed by the National Conference of Firemen & Oilers/SEIU International Union Local 349 (Firemen and Oilers Local 349)[3] on June 1. A consolidated complaint issued on December 29 alleging that Champion International Corporation (the Respondent), violated Section 8(a)(1) and (5) of the Act by: since about May 11 failing to give timely notice to PACE and the Firemen and Oilers and an opportunity to bargain over the effects on employees in the appropriate bargaining units of its decision to sell the Deferiet paper mill; on about May 11 unilaterally implementing preconditions for obtaining severance pay for employees in the PACE and Firemen & Oilers units; and on about June 11 unilaterally failing and refusing to pay employees in the PACE unit earned vacation pay pursuant to Section 17 of the PACE collective-bargaining agreement and that by such conduct the Respondent has failed and refused to bargain in good faith.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, PACE, and the Respondent, I make the following

[1] Paper, Allied-Industrial, Chemical & Energy Workers International Union and its Locals 45 and 56 are jointly referred to as PACE.
[2] All dates are in 1999 unless otherwise indicated.
[3] National Conference of Firemen & Oilers/SEIU International Union and its Local 349 are jointly referred to as the Firemen & Oilers.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, was engaged in the manufacture and sale of pulp and paper products at its facility in Deferiet, New York (the Deferiet mill), where it annually purchased and received goods valued in excess of $50,000 directly from points outside the State of New York. The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that PACE and the Firemen and Oilers are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Witnesses

The General Counsel called as witnesses: Michael Bellmore, an international representative for the PACE International Union; Frances Plummer, and Terry Burto, former long-term employees of the Respondent and local union officials,[4] who were hired by the Deferiet Paper Company (DPC),[5] the purchaser of the mill; James LaVaute, an attorney for PACE; and Jack Henry, a former international representative for the Service Employees International Union assigned to the Firemen & Oilers as a collective-bargaining representative.[6] The Respondent called as witnesses: Michael Culbreth, the Respondent's director of corporate employee relations; William Foster, the Respondent's senior associate counsel; Katherine Watson, the Respondent's former human resources manager at the Deferiet mill who at the time of her testimony was employed by DPC; Mushell Robinson, a former employee of the Respondent who participated in effects bargaining with the Unions as a member of the Respondent's bargaining committee; and Steve Ames and Bruce Pinkham, former employees of the Respondent at the mill and, respectively, the former president and vice president of the International Association of Machinists and Aerospace Workers, AFL–CIO Local Lodge 1009 (IAM Lodge 1009). Paul Records, the Respondent's vice president of organizational development, human resources and corporate facilities, although not called as a witness signed a letter that plays an important role in the parties' dispute.[7]

[4] Plummer was the local union president for the Firemen and Oilers Local 349 when he testified and at the time DPC purchased the Deferiet mill. Burto was the treasurer for PACE Local 45 at the time of his testimony, and prior to DPC's purchase of the mill he was the recording secretary for PACE Local 56.

[5] DPC is a wholly owned subsidiary of Crabar Paper and Allied Products Corporation (Crabar).

[6] Henry retired on November 1.

[7] The Respondent has admitted that Culbreth, Foster, Records, and Watson are or were while in the Respondent's employ its supervisors and agents within the meaning of Sec. 2(11) and (13) of the Act. Culbreth, Foster, Records, and Robinson worked out of the Respondent's offices in Stamford, Connecticut, during times relevant herein.

B. Evidentiary Findings[8]

The Respondent owned and operated the Deferiet mill until its sale to DPC on June 11. At the time of the sale, PACE represented a bargaining unit of about 420 of the Respondent's employees at the mill; the Firemen & Oilers represented a bargaining unit of approximately 19 employees; and IAM Lodge 1009 represented a bargaining unit of approximately 58 employees. The Respondent's collective-bargaining agreements with PACE and the Fireman & Oilers ran through February 1, 1998, and were extended by agreement through June 1. On April 9, the Firemen and Oilers gave notice to terminate its contract with the Respondent.

On October 8, 1997, the Respondent announced plans to divest itself of several operations, including the Deferiet mill. Thereafter, prospective purchasers periodically toured the mill. Effective May 11, the Respondent, DPC, and Crabar entered into an asset purchase agreement (APA) for the sale of the Deferiet mill by the Respondent to DPC. Article 4.1 of the APA provides that the closing would take place on June 1, but in no event later than June 30, unless the agreement was terminated.

The APA contains the following definition at page 8:

> "Special Severance Policy(s)" shall mean Champion International Corporation Divested Operations Severance Benefits Policy #830 and any severance policy(s) to be negotiated with represented Employees provided that such policies are no more favorable to the represented employees than Policy #830 or are approved by the Purchaser.

Section 8.1 of the APA provides, in pertinent part:

> Selected Employees. Within 10 days after the execution of this Agreement, the Seller will permit the Purchaser to meet with employees of the Groundwood Specialty Business at the Deferiet mill to introduce the Purchaser and present employees with applications and a handbook containing the Purchaser's initial terms and conditions of employment . . . . Thereafter, and before Closing, the Seller will provide the Purchaser with space at the Deferiet mill to interview applicants and conduct employment-related testing . . . . The Employees of the Seller who accept such employment and commence such employment are herein collectively referred to as the "Selected Employees."

Section 8.3 of the APA provides as to Severance Benefits that:

> To the extent that more than ten percent (10%) of the Employees become Terminated Employees, the Purchaser shall be responsible for the following severance and related costs attributable to such excess over ten percent (10%): (a) cash severance payments paid to terminated Employees pursuant to any Special Severance Policy . . . ."

"Terminated Employees" are defined at page 8 of the APA as:

[8] The findings set forth below are based on the credited testimony and documentary evidence. The witnesses' demeanor has been considered in making these findings.

. . . those employees who are not Selected Employees or who become Selected Employees and whose employment is terminated by the Purchaser within ninety (90) days after closing.

Section 8.5 of the APA provides in pertinent part that:

> Vacation. The Purchaser shall assume liability for all unpaid earned and unused, banked and accrued vacation pay of Selected Employees prior to the Closing . . . .

On the evening of May 11, PACE International Representative Bellmore received phone messages from officials of the PACE local unions at the Deferiet mill. They informed him that at approximately 5 p.m. that evening, local union officials had been called to a meeting with Respondent representatives and told that the mill was being sold to DPC.[9] Bellmore met with representatives of the PACE locals and mill employees at the PACE union hall across the street from the mill at 9 p.m. that evening. Bellmore was informed that, commencing with that evening's workshift, the Respondent was instructing employees to report to its human relations office to pick up a folder of documents relating to the application process for employment with DPC. At that time, Bellmore was shown a letter on the Respondent's letterhead, dated May 12, signed by Records. The May 12 letter was stapled to the top of the DPC application folder while the folder was distributed to the union represented employees at the mill.[10] The letter read, in pertinent part:

> Dear Champion Employee:
>
> Champion has agreed to provide space at the Deferiet Mill to Deferiet Paper Company Inc. personnel to interview applicants and conduct employment related testing.
>
> Enclosed is the Deferiet Paper Company's employment application packet.
>
> Please note that to be eligible for severance you must complete the application process (application, interview, testing, etc.) and be otherwise eligible in accordance with the terms of the severance plan.

Inside the employees' DPC application folder was a document directed to all hourly personnel employed at the mill with the heading "Applications for Employment." The document stated that DPC was purchasing the assets and business of Champion in Deferiet and it was expected that the transaction would close in mid-May. Champion employees were encouraged to apply to DPC. It stated that "We will be requiring everyone who wishes to be considered for employment to complete an application for employment, complete a paper and pencil survey, undergo a drug screen, and participate in an interview." The packet included a document entitled, "Employee Handbook" which set forth a detailed summary of DPC's initial terms of employment and it stated that some of those were not the same as those in the agreements between the Respondent and the Unions. The last two pages of the packet consisted of documents with the heading of "Applications-Testing Schedule." These pages stated people interested in employment with DPC should report to a specified Best Western hotel, "turn in their application, complete a pencil and paper survey, undergo a drug screen, and be scheduled for an interview according to the schedule on the reverse side of this page." It stated in bold capitalized print that "IT IS IMPERATIVE THAT ALL THESE STEPS BE COMPLETED AS SCHEDULED." The application packet contained a schedule for employees to participate in this process at the hotel on May 12 and May 13, in alphabetical order based on their shift times.

There were no provisions in the PACE or Firemen and Oilers' collective-bargaining agreements with the Respondent related to severance pay and the Unions had not previously negotiated a severance plan with the Respondent. Bellmore's credited testimony was uncontradicted that PACE had previously negotiated a substance abuse policy with the Respondent only giving the Respondent the right to test for cause based on observation of an employee engaging in erratic behavior. A union representative would also have an opportunity to observe the employee before testing was initiated. Bellmore testified that this was a written policy, posted to employees, and that it was negotiated after the 1993 collective-bargaining agreement.[11] Bellmore testified that Record's May 12 letter created confusion among the employees and local union officials with whom he met on the evening of May 11. There was particular concern about the conditions that the Respondent had established for an employee to receive severance pay, including the requirements that they had to apply to DPC and be drug tested by that company in order to receive severance from the Respondent. Bellmore told several employees at the union hall that it would be in their interest to take the drug test in order to secure employment with DPC and that Bellmore would attempt to find out what was going on.

Bellmore went to the mill on the morning of May 12 and met with Watson. He told Watson that he was making a demand for effects bargaining and that he would try to coordinate some dates with Henry, the international representative for the Fireman and Oilers, and Tom Holl, the business representative for the Machinists. Bellmore asked Watson to call Culbreth so that they could coordinate dates for effects bargaining. Bellmore asked Watson why the employees had not been receiving their pension read outs and he informed her that PACE wanted the read outs before they started negotiations.[12] Bellmore also went to the Best Western Hotel on May 12 and he observed that

[9] Watson, the then human resource manager of the mill, testified that the Respondent's plant manager held a meeting with PACE local union officials on May 11 and stated that the mill had been sold, that he did not know the closing date, but it was coming quickly.

[10] Watson testified that the May 12 letter was distributed to each employee on top of their DPC application materials. Plummer credibly testified that the May 12 letter was stapled to the top of his DPC application folder when he picked it up at the office. The employees in Plummer's department were instructed to report to the human resources department to pick up their application folders. Plummer testified that at human resources he spoke to Watson and he had to identify himself and sign his name in order to receive the application folder.

[11] The written drug testing policy was not placed into evidence.

[12] The forgoing is based on Bellmore's credited and uncontradicted testimony.

the Respondent's employees were there participating in the DPC application process including drug testing.[13]

On May 12, Culbreth placed calls to Bellmore, Holl, and Henry. He was able to reach Holl and Bellmore first and he asked them to begin effects bargaining immediately. Culbreth testified that he informed both union officials that he had no idea when the closing for the sale of the mill would take place. During the phone calls Bellmore stated that he could not meet until May 24, and that he, Bellmore, would also serve as the spokesman for the Firemen and Oilers on that date since Henry could not meet on May 24, but would be there on May 25.[14]

The Unions met with the Respondent at a Best Western Hotel in Watertown, New York, on the morning of May 24. The meeting began around 9 or 9:30 a.m. and adjourned late that afternoon or early that evening. Present were Bellmore, Burto, and several other local union officials for PACE. Plummer was there for the Firemen and Oilers. Holl, Ames, and Pinkham were in attendance as part of the bargaining representatives for IAM Lodge 1009. Culbreth, Robinson, Watson, and John Thorpe, a benefits specialist, represented the Respondent. Culbreth was the Respondent's chief spokesperson and Bellmore served in the same capacity for the Unions.

Bellmore had prepared a one-page agenda, which he distributed to all the parties during the session. Bellmore's agenda was discussed during the meeting, as was a similar document prepared by the Machinists. Bellmore credibly testified that the meeting began with a discussion of the payout of earned and accrued vacation to all employees, which was one of the items listed in his prepared agenda. Culbreth stated that the Respondent would not pay out accrued vacation. Rather, the Respondent had negotiated an agreement with DPC that the latter would assume the responsibility for the employees' vacation pay. Bellmore testified that the Unions protested stating that the Respondent could not void the provision in their collective-bargaining agreements concerning vacation pay.

Bellmore credibly testified as follows concerning the discussion of Records' May 12 letter at the May 24 meeting. The May 12 letter was raised by the Unions and they asked how the Respondent could insist that an employee to apply, interview, and submit to drug testing with DPC as a condition for receiving severance pay from the Respondent. There was a lot of discussion about how the Respondent would be made aware of whether someone passed a drug test in order to qualify for severance, since the test was supposed to be confidential. Culbreth stated that the Respondent would not know if someone passed the drug test. Rather, DPC would inform the Respondent whether or not an employee was being hired, or otherwise disqualified from severance pay. During the meeting, the Unions asked the Respondent to rescind the conditions regarding, "application, interviewing, and testing" for an employee to qualify for severance. Culbreth stated that he was not aware of the May 12 letter, so Bellmore supplied him with a copy. On reading the document, Culbreth stated that he was not responsible for Records and that it was unfortunate that Records wrote the letter. However, Culbreth stated that the Respondent was not interested in rewriting the severance plan that it was contemplating. Watson, a witness for the Respondent, corroborated many aspects of Bellmore's testimony about the discussion of May 12 letter at the meeting. Watson testified that the May 12 letter was raised and the "Union objected to the fact that the employees had to apply and interview for positions within Crabar, and there was a lengthy discussion around the drug testing." She testified that there were concerns by all of the union representatives concerning the drug testing and that "Terry Burto, from Local 56 at that time, and Roy Calhoun were quite—from 349—were very concerned about the fact that Champion—it appeared as though Champion would be able to have access to the results of the drug screening; and they objected, and Mike Bellmore agreed . . . ." Watson testified that Bellmore also asserted that the Respondent did not have the right to do hair testing for drugs under the collective-bargaining agreement with PACE.

During the May 24 meeting, Culbreth provided Bellmore with a proposal entitled, "Effects of Sale Agreement." It stated on page 4, paragraph 5, that, "As of the Closing Date, all employees will be removed from the Company's payroll and their employment will be terminated." There was also a paragraph in the proposal entitled, "SEVERANCE PAY," which stated that employees may be eligible for severance under the terms of the Respondent's "Severance Benefits Policy #818." Culbreth also gave Bellmore a copy of policy 818. It is stated in policy 818 at page 1, paragraph 2, that this "Policy is an employee welfare benefit plan under Title I of the Employee Retirement Income Security Act of 1974 as amended ('ERISA')."

Policy 818 provided several basis for an employee to be excluded from severance coverage, including: failure to timely submit an application for employment with the purchaser or to fully participate in the application process; being offered employment by the purchaser; being terminated by the Respondent or the purchaser for performance related reasons; and being terminated by the Respondent or the purchaser, or not hired by the purchaser, for cause "including the failing of any pre-employment or employment related drug tests(s)." Policy #818 also set forth a specified severance pay benefit package for eligible employees.

Bellmore's credited testimony reveals that: Bellmore told Culbreth that he disputed the conditions for severance pay contained in Policy 818 which were essentially the same as those provided in the May 12 Records' letter. Bellmore asked Culbreth to rescind the conditions set forth in both the letter and the policy in that they had not been negotiated with the Unions. Bellmore told Culbreth that the Respondent's continued application of the policies in the May 12 letter was unlawful. Culbreth responded that the Respondent was not interested in rewriting the policy. He stated that the policy had been submitted to ERISA, that it would be time consuming to rewrite it, that they would have to get approval, which could take several months, and that the Respondent was not going to do it. Bellmore argued that it could be rewritten and that this was the purpose of effects bargaining. He testified that "I can tell you

[13] Plummer, a member of Firemen and Oilers Local 349, testified that he went to the hotel on May 13, filled out an application, took a drug test and set up an appointment for his interview with DPC.

[14] I have credited Culbreth's testimony concerning the scheduling of the initial meeting.

we beat on this for quite some time. Not only myself, but members of (the) PACE committee, (the) Machinists Committee, (and) Firemen and Oilers Local 349." Bellmore testified that "I think I requested of Mr. Culbreth personally, probably at least on three or four occasions, where I asked him to rescind those preconditions regarding (the) severance plan. And I based that on that May 12th letter." He explained that he wanted Culbreth to rescind all the preconditions regarding applications, interviews, and drug testing.

Bellmore testified that the PACE agenda for the meeting also contained a request for a copy of the purchase agreement between DPC and the Respondent for the mill and that he requested that the Respondent furnish PACE a copy of the agreement during the May 24 meeting. PACE' request in its written agenda also required the Respondent to produce "any accompanying exhibits associated with the sale/purchase agreement . . . ." During the discussion concerning the request for the purchase agreement, Culbreth represented that it was a 500- or 600-page document.

The parties met on May 25 at the same place at around 9:30 a.m. with the same participants with the addition of Firemen and Oilers Representative Henry. Bellmore remained the Unions' chief spokesperson, but others spoke at the meeting. Bellmore credibly testified as follows concerning the events at the May 25 meeting. There was a good deal of argument about the Respondent's policy 818 and the May 12 letter and Bellmore again told Culbreth that they were unlawful in that the Respondent had established a severance plan without negotiating with the Union. Bellmore repeated this assertion around a half dozen times during the meeting. Both Henry and Holl also spoke to the issue of the letter. Henry also credibly testified that on May 25, all of the Unions participated in a discussion requesting that the Respondent rescind the May 12 letter and all of its attachments.

Watson in large part corroborated the testimony of the union officials concerning the discussion of the May 12 letter during the May 25 meeting. She testified as follows: There was a lot of discussion about the letter during the meeting, and the parties discussed the same things that they had on May 24 about the employees "having to apply, interview, and go through the drug testing." Watson remembered Henry speaking and that "he objected to the fact that the employees had to go through the interviewing, the application process, and the drug screening." Henry explained that the union contract did not permit hair testing, and there was a concern that the Respondent might be able to get the results of the drug test. Culbreth responded that Crabar was conducting the drug screening, not the Respondent; therefore, it was not in violation of the labor agreement. Watson admitted that the Unions objected to the May 12 letter on May 24 and May 25 because the items in the letter including drug testing and applying for a job were conditions for employees receiving severance pay.[15]

Bellmore testified that the vacation issue was also discussed at the May 25 meeting and the Unions repeated the argument that their contracts required that the Respondent pay all the employees who had earned and accrued vacation credit. They protested the Respondent's assertion that it had made a deal with DPC to make the payments. Bellmore testified that the Respondent's assertion that DPC was picking up this liability and that this was contained in the purchase agreement added to PACE' need to receive a copy of this document.

Bellmore testified that the Respondent took a long caucus on May 25 in that Culbreth informed the Unions that he was calling the Respondent's headquarters in Stamford to discuss the vacation issue, the Unions' request for the asset purchase agreement (APA), and to discuss policy 818. Bellmore estimated that the Respondent's caucus lasted 5 or 6 hours.[16] During the caucus, Bellmore, Henry, and Holl met Culbreth in the hotel lobby. Culbreth stated that something could be worked out regarding the Unions' request for the APA if the Unions entered a confidentiality agreement. Culbreth stated that he had some concerns about disclosing the sales price to the news media or to competitors. Bellmore responded that they were not going to insist on the sales price and that it would not be disclosed to the news media or competitors. Culbreth stated that the APA could not be faxed because it was 500 to 600 pages and the best that they could do was overnight it. Bellmore responded that he had never seen a purchase agreement of that length and that the Unions needed it as soon as possible to expedite negotiations. At that time, Bellmore tendered to Culbreth a one-page typewritten document dated May 25 signed by the three lead union officials. The letter requested that the Unions be provided within 3 days, "copies of all agreements, correspondence or other written memoranda between your company" and DPC relating to "the sale of the mill and the possible or agreed to terms of that transaction." The letter stated that, "We need these documents in order to negotiate . . ." over the sale transaction and its effect on unit employees, and we reserve the right to engage in such bargaining after we receive the documents."[17] The May 25 meeting ended late that afternoon or in that early evening.

The parties met on May 26 at the same place at about 9:30 a.m. Culbreth called Bellmore, Henry, and Holl to the hallway and stated that Foster was preparing a proposed confidentiality agreement pertaining the Unions' request for the APA and that it would be forthcoming sometime that day. Culbreth stated that the Unions had to sign the confidentiality agreement to receive the APA. Bellmore testified that the union committees decided that it was in their interest to acquire the APA before proceeding with negotiations and the parties did not meet any

[15] Respondent witnesses Culbreth, Watson, and Robinson testified that there was never a request by the union officials, during the May 24 and 25 meetings, for the Respondent to rescind the May 12 letter. For reasons set forth in more detail in the section of this decision discussing the testimony of the Respondent's witnesses, including consideration of the witnesses' demeanor, I have not credited the Respondent's witnesses on this point. I have concluded that the union officials did request that the Respondent rescind the May 12 letter as they testified.

[16] Culbreth also testified that, as Bellmore had described in his testimony, there was a lengthy caucus on May 25. During the caucus, Culbreth called his supervisor, Scott Lapinski, the Respondent's vice president of human resources and organization development and Culbreth had several conversations with Lapinski and Foster.

[17] Bellmore gave Culbreth the same request on a PACE letterhead under Bellmore's signature on May 26.

further that day. Bellmore testified that there was discussion about the possibility of meeting again the following week. However, Henry was on vacation that week and Bellmore had to attend PACE' first staff meeting after the Union's merger and that the meeting was in Atlantic City, New Jersey. Bellmore testified that he also felt that the PACE needed time to review the APA before meeting. Bellmore testified that in response to the Unions' inquiries Culbreth was not able to provide a specific closing date for the sale.

In the late afternoon on May 26, Bellmore received a proposed confidentiality agreement from Foster. He also received the next day, by overnight mail, another copy of the confidentiality agreement and an index to and selected portions of the APA. Bellmore reviewed the sections of the APA that were provided to him. He testified that he noticed that section 8.6, entitled "Continuation of Administrative Services" provided for the provision of such services by the Respondent for employees hired by DPC on request of DPC for a period of 12 months after the closing date of the sale. The services were to be provided pursuant to a document entitled "Transition Services Agreement" (TSA). Bellmore testified that this information made him think that there was a possibility of a joint relationship between DPC and the Respondent and that, as a result, he subsequently requested a copy of the TSA from the Respondent.

On May 27, Bellmore faxed Foster a letter reflecting that they spoke the day before and that Bellmore had informed Foster that the Respondent's proposed confidentiality agreement was unacceptable. The letter read as follows as to the reasons that PACE needed the requested information:

> Depending on the nature of the transaction between your company and the purchaser, and the identity of the principals involved, and the provisions of the sale documents(s), there is a possibility that Champion would have an obligation to bargain over the decision to "sell" the mill, or there may even be an argument that because of the nature of the transaction and the legal relationship between the seller and the buyer, the existing labor agreement continues to be applicable.

Bellmore's letter went on to state that a review of the requested documents might convince PACE that the only issue between PACE and the Respondent was effects bargaining. However, PACE needed to review the documents to determine if they had an impact on effects bargaining. The letter stated that the Respondent's proposed confidentiality agreement would require PACE to give up any right to engage in decision bargaining, and would require PACE to agree not to use the documents in litigation. It stated that PACE could not agree to give up its right to take legitimate action concerning the transaction if necessary, including possible NLRB and Federal court litigation. It stated that as soon as the Respondent provided the information, PACE could begin to engage in bargaining.

Foster responded by fax dated May 27, stating that virtually all provisions of the APA have no relevance to effects bargaining and were highly confidential. He stated that "Thus far, Champion has assumed the burden of facilitating effects of sale bargaining. It is the union which should be actively pursuing such bargaining, instead of seeking to delay the same." Foster stated that the Respondent had no intention of bargaining over the decision to sell the mill, and that there was legal precedent that a union could waive its right to engage in effects bargaining. Foster stated that Culbreth was in the process of advising Bellmore of his availability to meet, and that hopefully Bellmore would take advantage of the opportunity to engage in effects bargaining.[18]

Bellmore responded by fax to Foster dated May 28, stating, in pertinent part that:

> Champion on May 12, unilaterally imposed conditions for unit employees that it should have given the union an opportunity to bargain over. No such opportunity was presented, and those conditions were communicated directly to employees. As I told your representative at a session on May 24, 1999, that action by the company was unlawful, and it must be rescinded. You cannot be engaging in good faith bargaining now over effects where you have already unilaterally imposed conditions relating to items you are obligated to bargain over with the Union.
>
> Section 8.6 of the Assets Purchase Agreement provides for continued involvement by Champion in the bargaining unit after the Closing Date. Please provide a copy of the Transition Services Agreement, so we can see what the relationship between Champion and the Deferiet Paper Company is before and during the closing periods and the 1-year period after the closing. We need to see if Champion has really 'divest[ed]' itself of the mill, or whether there might be a joint employer relationship, and what the true nature of the transaction is. That is also why we need the entire Sale Agreement(s). We also need any documents, correspondence and analysis showing Champion's reasons for the transaction or matters it considered in making decisions about the transaction. We need this to determine the nature of the transaction, which may bear on Champion's continuing legal obligations to the union and the employees in the unit.
>
> The Union reserves the right to bargain over the decision and the effects of it, relative to the transaction with Deferiet Paper Company. We also reserve the right to proceed with claims of labor agreement violations against Champion because of the transaction and Champion's contemplated continued involvement in the mill. Your providing the above information expeditiously will help move this along.

[18] On May 27, Culbreth overnighted a letter to Bellmore, Henry, and Holl. Culbreth spoke of phone conversations that he had had with each of the union officials on that date where he told them that the APA was available for them to pick up at the Deferiet mill. However, the union officials had stated that they would not pick up the APA until they had an opportunity to review the Respondent's proposed confidentiality agreement. Culbreth stated that, as he had told the Unions on May 26, meetings were scheduled with the Respondent and DPC towards the end of the week of May 31, at which time a closing date of the sale might be finalized. Culbreth stated that it was critical to resume bargaining prior to those meetings. Culbreth stated that he was available to meet any day the following week.

Foster responded to Bellmore by fax dated June 1. The letter stated that enclosed was a copy of the TSA agreement. It noted that, under the TSA, administrative services were only to be provided by the Respondent to DPC for a period not to exceed 180 days, and Foster contended that it was an arms length transaction where the Respondent would be compensated for its services. The letter stated that the Respondent had been advised by DPC that it would not be seeking transitional services with respect to payroll or employee benefits. Foster stated that he had enclosed a copy of article II of the APA, which Foster claimed would show that the transaction was a true asset sale and that the Respondent was divesting itself of the mill. Foster stated that the information provided should "fully resolve any purported questions you may have had over the nature of the transaction, ..." The letter went on to state:

> Lastly, I dispute your allegations relative to the unilateral institution of 'conditions of employment' by Champion relative to bargaining unit employees. Any item concerning the effects of sale upon bargaining unit employees continues to be fully negotiable from Champion's perspective. I would again urge that you move that process forward and present any proposal you may have to Mr. Culbreth at your earliest opportunity.
>
> I trust that the enclosures address your alleged concerns and that, if you truly intend to engage in good faith bargaining you will do so without any further delay.

Bellmore responded to Foster via fax dated June 4. Bellmore stated that:

> We have previously demanded that you rescind the conditions imposed on May 12, 1999, and bargain in good faith with the Union. Your June 1, 1999, letter does not state that you will rescind the changes. The Union is not obligated or willing to negotiate from your unlawfully altered bargaining position, which would be the case unless you rescind the May 12th conditions. Kindly notify me of your decision in that respect.

Bellmore went on to repeat his request for the complete "sale agreements(s)," and he stated that the PACE could not accept Foster's representations about what was in those documents. Bellmore also asked for the correspondence where DPC stated that it was not seeking certain transitional services.

By fax dated June 4, from Culbreth to Bellmore and Henry, Culbreth stated that he was writing to apprise the Unions of some recent developments, and to remind the Unions of the importance of meeting and bargaining, "if, in fact, the union does intend to bargain." Culbreth stated that while Henry was on vacation and Bellmore was in Atlantic City, "an Effects of Sale Agreement was reached with Local 1009 of the IAM & AW. You should be aware that the IAM counter proposed a confidentiality agreement for the release of the" APA, "which Champion deemed acceptable. This is in sharp contrast to your position, which has been to refuse to bargain entirely, either on effects of sale issues or about the confidentiality of the non-employee related provisions of the APA." Culbreth stated that in a phone conversation the night of June 3 with Bellmore, he requested that the parties meet on June 4, and stated that he was willing to remain in Watertown to do so, but that Bellmore told Culbreth to go home.[19] Culbreth finished by stating that:

> This letter is intended to remind you that the company will consider your continued refusal to bargain to be a waiver of the unions' right to do so. The ball is in your court.
>
> Be aware, however, that any proposal which the company has placed on the table will be withdrawn, effective June 11, 1999, absent good faith bargaining by the unions or an agreement prior to that date.[20]

On June 7, PACE Attorney LaVaute faxed a letter to Foster. The letter stated, in pertinent part:

> Contrary to your June 4 letter, the Union is not refusing to engage in bargaining. In the interest of expediting the matter, the Union is ready to engage in effects negotiations as soon as you rescind the May 12, 1999, conditions that Champion unlawfully implemented.

LaVaute he went on to state:

> Without waiving our right to the information requested, we are willing to engage in negotiations at the same time as we attempt to resolve the information demand issues. We reserve the right to undertake negotiations as to the decision to implement the transaction, and any negotiations now are not a waiver of that position.

LaVaute explained the relevance of PACE' information request for "memoranda, communications, and analysis related to the transaction." He stated that it would help PACE learn the reasons for the transaction, the intentions of the parties concerning the workforce and PACE, and whether DPC was exercising employer like influence over the conditions of employment of the unit employees prior to the closing date. LaVaute also asserted that PACE had been engaging in negotiations over the requested information and he tendered along with his letter a proposed confidentiality agreement relating to PACE's request for the APA.

On June 8, Foster faxed a response to LaVaute stating:

> I will reiterate for you, as I have for Mr. Bellmore, that Champion has not implemented anything, much less illegally so. My letters of June 1 and June 4, 1999 have stated that '. . . Champion's position that all items concerning the effects of sale upon bargaining unit employees, *including severance pay, remain fully negotiable*.' [Emphasis supplied.] That being the case, I am at a loss to understand what you mean by

[19] Bellmore credibly testified that, during this phone conversation with Culbreth, he told Culbreth that he had not been provided the APA. He also told Culbreth that the Respondent had unlawfully imposed conditions on the Union, including the requirements of application, interviewing and testing, and that since the Respondent had not rescinded the conditions it imposed on May 12, that Culbreth might as well go home.

[20] Culbreth had met with representatives of IAM Lodge 1009 on June 3 and they reached an agreement concerning effects bargaining. The agreement, with a couple of modifications, was in large part identical to the Respondent's effects agreement proposal tendered to the Unions on May 24. Under the IAM's effects agreement, severance pay and eligibility were governed by the Respondent's policy 818.

> 'rescind.' Severance pay, under any conditions, does not exist for PACE-represented employees. Perhaps you could explain what 'rescind' means, given that fact and Champion's position.

Foster, in his June 8 letter, also issued a counterproposal concerning LaVaute's proposed confidentiality agreement for the APA. There, Foster stated that since the Respondent had already furnished the APA to Region 3 in response to PACE's unfair labor practice charge, he requested that PACE rescind paragraph 5 from its proposed confidentiality agreement. Paragraph 5 allowed PACE to use the APA in NLRB or court litigation pertaining to the Respondent or DPC.

LaVaute responded by fax on June 9, stating:

> What I meant by 'rescind' is that Champion has unilaterally implemented a proposal that conditions the receipt of any severance pay upon employees meeting certain requirements as to application with Deferiet Paper Company. The proposal, which set these conditions, was communicated in writing directly to the employees, which is a violation of the NLRA. Champion should advise the employees, in the same manner as they were given the conditions, that the conditions set out in the May 12 letter are withdrawn, and bargain in good faith with the Union.

LaVaute also stated that PACE refused to delete paragraph 5 from its proposed confidentiality agreement.

On June 10, Foster faxed a response to LaVaute. He stated that the Respondent was willing to accept PACE's proposed confidentiality agreement for the APA, to allow bargaining to resume "on or before June 11." LaVaute was informed that the APA was at the Deferiet mill in a sealed envelope and that Bellmore could pick it up for LaVaute's review. The letter stated, "For your information, also attached is a memo posted at the Deferiet Mill addressing the concerns relative to the May 12, 1999 letter." The attached memo was dated June 10, signed by Records, and on the Respondent's letterhead. It read as follows:

> This letter is intended to clarify apparent misunderstandings that have arisen concerning severance pay in connection with the sale of the Deferiet mill.
>
> There is in place a severance pay policy for salaried employees. In addition, Local 1009 of the IAM & AW and Champion have reached an agreement over the effects of the sale which contains severance pay provisions.
>
> With reference to employees represented by Local 45 and 56 of the PACE International Union and by Local 349 of the NCF&O, it is important to understand that there are no severance pay provisions with regard to these employees. This would include severance pay and any conditions for the receipt of severance pay. Any provisions relative to the receipt of severance pay, including conditions for the receipt of such pay, must be negotiated and agreed to by the respective unions. There have been no agreements reached and, accordingly, there are no severance provisions in effect. If and when agreements are reached, severance pay, if any, will be administered in accordance with these agreements.
>
> Effects of sale negotiations between Champion and PACE Locals 45 and 56 and NCF&O Local 349 took place from May 24–26, 1999 and have been in recess since. Champion is hopeful that effects bargaining will resume, and has been available to do so from May 26th until the present. It is our sincere desire to resume bargaining and to conclude agreements relative to the effects of the sale upon those bargaining unit employees.[21]

On June 11, Bellmore went to the mill and picked up PACE's copy of the APA. Under the terms of the confidentiality agreement, Bellmore was precluded from personally reviewing the document, rather he was required to deliver it to LaVaute to have it inspected. Bellmore spoke to Watson while he was at the mill. Watson told Bellmore that DPC was going to take over the mill at about 3 p.m. that day. Bellmore credibly testified that he had no prior knowledge that the closing was going to take place on that date.[22]

The next bargaining session occurred on June 14, and Bellmore believed that he initiated the meeting. The meeting took place at the Ramada Inn in Watertown, New York. In attendance were Bellmore, members of his committee, Henry and Plummer for the Firemen and Oilers, and Culbreth, Robinson, and Thorpe for the Respondent. During the meeting, Bellmore tendered a letter to Culbreth citing the APA and asserting that the APA provided that the Respondent could not negotiate a severance policy with PACE that was more favorable to the employees than policy #830, without approval of DPC. The letter requested a copy of policy 830, and stated that "we demand that" DPC "representatives with authority participate in these negotiations." The parties discussed Bellmore's request for policy #830, during the meeting and they also discussed some pending grievances. Following the grievance discussion, Culbreth caucused for about 2 or 3 hours. Bellmore and Henry then looked for and found Culbreth. At that time, Culbreth stated that he did not see the necessity of having DPC representatives attend the negotiations and that it was unlikely that they would participate in effects bargaining. Culbreth stated that perhaps policy 830 would be forwarded to PACE and the meeting ended.

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[21] Plummer credibly testified that Records' June 10 memo was posted in his work area where the Respondent typically posted notices to employees. He testified that the memo was not distributed individually to employees, nor did he sign for the memo as he had for the Records' May 12 letter and the accompanying DPC employment packet.

[22] I credit this aspect of Bellmore's testimony. Culbreth testified that he thought that he called Bellmore on about June 10, and told Bellmore that it was essential that they meet to bargain because it appeared that the closing was taking place. However, on further questioning, Culbreth stated that he did not tell Bellmore to a certainty that closing would take place on June 11. Rather, he claimed to have told Bellmore that based on what he, Culbreth, knew closing would take place on June 11. Culbreth testified that, during the conversation, Bellmore agreed to meet on June14. I do not find that this conversation occurred as Culbreth claimed. First, I note that Culbreth had memorialized other phone calls to Bellmore with follow up letters, which did not occur here. Moreover, Foster had written to LaVaute on June 10, but did not see fit to inform him of the closing date.

The parties met again on June 15 at the same location. Culbreth stated that DPC would not participate in negotiations and that policy 830 would be forwarded to the Unions. The meeting lasted around 30 minutes. This was the last effects bargaining session.

Bellmore received policy 830 on June 16 or 17. The cover letter from Culbreth reiterated that DPC representatives would not attend negotiations and that the Respondent would not request DPC to release PACE committee members from work to allow them to attend effects bargaining. This was in response to another request that Bellmore had made during the June 14 and 15 sessions, which Culbreth had also denied at that time. Culbreth's letter stated that LaVaute had stated in his June 7 letter that PACE was willing to engage in negotiations while the parties attempted to resolve the information request issues. It accused Bellmore and Henry of refusing to meet since May 26, and stated that "now Champion's last offer has been withdrawn as of June 11, 1999. I am at a loss to understand your failure to negotiate the effects of sale." Culbreth stated that he remained available to bargain over the effects of the sale.

LaVaute responded to Culbreth by letter dated June 17. There LaVaute accused the Respondent of failing to rescind its unlawfully implemented conditions of the Records' May 12 letter. LaVaute stated that he had explained to Foster in a prior letter that "rescind meant to communicate in writing directly to the employees that the conditions set out in the May 12 letter were withdrawn." LaVaute cited the Respondent's June 10 posting to employees and went on to state:

> . . . the claim in your letter that the unions have failed to meet with the company since May 26, 1999, erroneously implies that the unions are at fault, whereas Champion's intransigence and unlawful unilateral acts which it refused to rescind kept the parties from meeting.
>
> As Mr. Bellmore has advised you this week, it is clear that we need to have Deferiet Paper Company at the bargaining table for effects bargaining, and your June 16 letter established that you are refusing to arrange for that. And you state in your June 16 letter that Champion's last offer has been withdrawn as of June 11, 1999. PACE will pursue its remedies with the National Labor Relations Board.

C. The Testimony of the Respondent's Witnesses

Respondent witnesses Culbreth, Watson, Robinson, and Ames attempted to downplay the extent of the Unions' protest over Records' May 12 letter during the May 24 and 25 bargaining sessions. This was highlighted by Culbreth, Watson, and Robinson's claim that the Unions did not ask that the letter be rescinded during either of the meetings, and Ames' claim that the letter was dropped after the Unions brought it up during the morning of May 24. However, I have found the testimony of the Respondent's witnesses concerning the discussions around the May 12 letter to be inconsistent between witnesses, and internally inconsistent. Taking into consideration the witnesses' demeanor, I have found the Respondent's witnesses' testimony to be not as reliable as the credited testimony of the General Counsel's witnesses set forth above, which was corroborated by certain admissions by the Respondent's witnesses.

Mushell Robinson held the position as the Respondent's organizational development human resources specialist during the May and June negotiations. She was working for Culbreth at that time and was a member of the Respondent's bargaining committee. Robinson no longer worked for the Respondent at the time of the hearing and her recollection of the May and June negotiation sessions was hazy at best even though she was allowed to review her notes during her testimony. For instance, Robinson testified that Henry attended the May 25 meeting, but she could not recall what Henry said at the meeting. However, Robinson incredibly claimed that she knew to a certainty that nothing was said about rescinding the May 12 letter during the meeting. Taking into consideration Robinson's demeanor, as well as her selective memory, I have concluded that she remained aligned with the Respondent when she testified. I do not find Robinson's claim that there was no request by the Unions that the Records' letter be rescinded on May 24 and 25 to be worthy of belief. Rather, Robinson's response appeared to be rehearsed and in my view it served to undercut the testimony of the Respondent's other witnesses. Watson, although she was fairly specific about most of her testimony, when she was asked if anyone said anything about rescinding the May 12 letter at the May 24 meeting, replied, "Not that I recall; no." Moreover, as set forth in detail below, I have concluded that Culbreth had a tendency to shade testimony. I have therefore not credited the claims of the Respondent's witnesses that the union representatives failed to ask that the May 12 letter be rescinded during the May 24 and 25 meetings.

Culbreth testified as follows concerning the discussion of May 12 letter at the May 24 session: Following the Unions' presentation of their agendas for negotiations, Culbreth presented the Respondent's written proposal to the Unions which took place in the afternoon. It was during the discussion of the Respondent's proposal that most of the Unions' complaints about the severance issues arose. There were complaints by several union officials about employees having to go through drug testing in that the Respondent had only theretofore bargained for drug testing for cause. The Unions' complaint was that "this somehow ended up being a random testing, using hair samples and things the Company hadn't bargained." Culbreth responded that this was DPC's drug testing plan not the Respondent's, which generated the question of how the Respondent would exclude employees from severance pay based on the drug testing. Culbreth explained that there were 10 or 12 issues that could exclude an employee from severance. He stated that a process would be set up where DPC would notify the Respondent that an employee was not eligible and that the employee could appeal the decision through the appeals procedures governed by ERISA guidelines. Culbreth stated that the Respondent would not find out that an employee failed a drug test unless the employee in the appeal process released that information to the Respondent. Culbreth testified that the parties talked about the whole application process, and that it was in this context that, in his words, there was a "brief" discussion about the May 12 letter. However, Culbreth's claim that the May 12 letter and complaints about drug testing were not discussed until the afternoon on May 24, was undercut by a statement contained his prehearing affidavit. He stated in the affi-

davit that during the early portion of the meeting the union representatives complained of the May 12 letter. Moreover, Respondent witness Ames testified that the Unions brought up the May 12 letter during the morning on May 24.[23]

Culbreth testified that Bellmore brought up the May 12 letter as to the employees having to go through the application process, including drug testing. Culbreth looked at the letter at the meeting and told Bellmore that he did not have anything to do with the letter. Culbreth testified that he stated that the Respondent had a great concern for employee benefits, and that he felt that the letter was to insure that employees were employed by the new employer. He testified that it was at that point that they basically stopped talking about the letter.

While Culbreth claimed that the May 12 letter was not specifically mentioned again during the parties' meetings, he testified as follows in reference to the letter:

> JUDGE FINE: But the topic of the letter—what was included in the letter was discussed?
> WITNESS: At length; and there were many, many complaints about drug testing, about application.

Culbreth later denied that he was asked to rescind the letter during the negotiation sessions, stating that the "Only time I ever saw about rescinding the letter was in a letter that Mr. Bellmore sent to Company Counsel." "We talked about that letter just purely from the merits of the letter. The testing was done. I don't even understand what you mean about rescinding the letter." Culbreth then testified that the Records' May 12 letter did not talk about drug testing. He also incredibly claimed in contradiction to his prior testimony that he did not know that the term testing in the letter referred to drug testing. When asked what the word testing in the letter referred to, Culbreth testified while looking at the letter that, "It says 'Application, interview, testing.' I know they took written tests. I had absolutely nothing to do with either the letter or the testing process."

Culbreth testified that the Respondent maintained the following positions in its negotiations with the Unions:

> JUDGE FINE: All right. So it was a condition that you had to apply to the purchaser in order—and be rejected—the Company's view," . . ." was that if you applied to the purchaser and got hired, you wouldn't get severance. If you didn't apply to the purchaser, you wouldn't get severance. It was only those who applied to the purchaser and were not hired that would get severance.
> WITNESS: That's correct.
> JUDGE FINE: And you informed the Union of that?
> WITNESS: Yes, sir.
> JUDGE FINE: Well, I think of one more point and ask one question here. If somebody applied to the Company—to the new Company—to the new Employer, took a drug test and failed, so they were not hired; what was Champion's position? Would that person be entitled to severance or not?
> WITNESS: Well, Champion's position was: In the first place, we wouldn't know if that person flunked the drug test; that they would be told—Champion would be told by Deferiet Paper that they were not an eligible employee.
> JUDGE FINE: Eligible for what?
> WITNESS: For severance.
> JUDGE FINE: So in other words, in order to get severance, you not only had to apply, but you had to pass the drug test?
> WITNESS: Right . . . .

Culbreth testified that the parties did reconvene the morning of May 25, and that they got back into some of the same issues. He testified that "Mr. Henry made several comments, reiterating some of the same criticisms and complaints from the day before, and . . . ." Henry's comments were that "what we were doing was unfair and unreasonable, and he thought that this was illegal and that there were—we weren't bargaining in good faith, ..." Culbreth testified that he responded that Henry needed to be more specific concerning allegations that Culbreth was not bargaining in good faith.

While Culbreth testified that the May 12 letter was only briefly discussed on May 24, and that it was not mentioned thereafter. Respondent witness Watson testified as follows: The May 12 letter was discussed during the May 24 bargaining session and the "Union objected to the fact that the employees had to apply and interview for positions within Crabar, and there was a lengthy discussion around the drug testing." Watson testified that, during the May 25 negotiation session, "There was again a lot of discussion about the letter itself, ..." Watson testified that the parties discussed the same things about the letter on May 25 that they had on May 24 about the employees "having to apply, interview, and go through the drug testing." Watson testified that she specifically remembered Henry speaking and that "he objected to the fact that the employees had to go through the interviewing, the application process, and the drug screening." Henry explained that the union contract did not permit hair testing, and there was a concern that the Respondent might be able to get the results of the drug test. Watson admitted that the Unions objected to the May 12 letter on May 24 and May 25 because the items in the letter including drug testing and applying for a job were a condition for getting severance. Thus, Culbreth's claims that the letter was not discussed on May 25, or that Henry's assertion on that date that Respondent was engaged in unlawful conduct was not specific is plainly undercut by Watson's testimony.

[23] While Ames was the IAM Lodge 1009 president during the events in question, he was called to testify as the Respondent's witness. Based on his demeanor and testimony as a whole, I have concluded that, although Ames had been a union official, his interests here were more in line with that of the Respondent than the Charging Party Unions. In this regard, IAM Lodge 1009 split with the other two Unions and accepted the Respondent's proposal for effects bargaining. Based on my observation of former IAM Lodge 1009 officials Ames and Pinkham during their testimony, I sensed that there was a rivalry between Machinists and the charging parties. Moreover, I have concluded that there was a general unreliability about Ames and Pinkham's testimony, which is more fully discussed below. Nevertheless, I credit Ames' testimony that the May 12 letter was first discussed during the morning of May 24, over Culbreth's claim that it was not brought up until later in the day. In this regard, Ames had no reason to misstate this point, while Culbreth was intentionally attempting to downplay the Unions' protest concerning the letter.

The credited testimony of Bellmore, Henry, and Watson establishes that the Unions' protest over the May 12 letter related to DPC's application process, and in particular that the employees had to be drug tested by hair testing in order to qualify for severance. In sum, I have concluded that the May 12 letter directed the employees to apply to DPC, and undergo testing as part of the application process in order to qualify for severance from the Respondent. The accompanying DPC employment packet required the employees to be drug tested, and I conclude that Culbreth, at a minimum, was informed and knew this to be the case during the May 24 meeting. Moreover, I conclude that Bellmore repeatedly asked the Respondent to rescind the May 12 letter on May 24 and 25, and that Henry joined this request on May 25 when he first attended negotiations.

William Foster, the senior associate counsel for the Respondent, testified that he drafted the May 12 letter baring Records' signature. Foster claimed that the letter was only supposed to be distributed to salaried employees at the Deferiet mill, along with their DPC application folder. However, at some point which he could not specify, Foster became aware that the letter was also distributed to bargaining unit employees. Foster testified that, "I know that at some point, Mike Culbreth mentioned that the Unions at the first meeting were not happy with their members getting the letter; and I just reaffirmed to Mike to tell them that everything was negotiable; this doesn't do anything." Foster testified that he "had many, many discussions with respect to" the May 12 letter, as well as correspondence with PACE' attorney about the letter. Foster testified as follows about what he contended was an inadvertent distribution of the May 12 letter to bargaining unit employees:

> Q Now once you heard of this more wide dissemination, did you—you put a stop to any distribution? Did you put out any further memo immediately upon hearing about this more wide distribution, saying that that was improper?
> A Okay, Number one, no; I didn't put a stop because it was already out.
> Q So you heard about it after . . . .
> A It had already been distributed.
> A Number two, did I send out something explaining it immediately? Answer: no.[24]

Part of PACE and the Firemen & Oilers' dispute with the Respondent during negotiations was the Unions' request for a copy of the APA and the Respondent's refusal to provide it absent the Unions agreeing to a confidentiality agreement concerning the document. The dispute over the APA was a factor contributing to the delay in scheduling negotiation sessions after May 26. Culbreth testified that he called Bellmore on June 3, in an effort to set up a meeting on June 4, and Bellmore declined. Culbreth was attempting by this testimony to place the blame on PACE for the breakdown in negotiations. Culbreth, concerning his June 3 call to Bellmore, incredibly testified that he thought that the APA was provided to PACE on May 27 or May 28. Yet, the evidence revealed that PACE was not provided with a copy of the APA until June 11. Culbreth denied, at the hearing, that he was aware that PACE had not received the APA as of his June 3 phone call to Bellmore. Culbreth's testimony was undercut by his June 4 letter to Bellmore accusing PACE of refusing to bargain about the confidentiality of "the nonemployee related provisions of the APA." Culbreth had previously conditioned PACE' receipt of the APA on its entering a confidentiality agreement. Culbreth's statement in his June 4 letter clearly reveals that, at that the time of his June 3 call to Bellmore, Culbreth was aware that PACE had not yet received the APA. Culbreth also acknowledged on cross-exam, that he had been copied a letter from Foster to Bellmore, dated June 10, showing that the APA was actually made available to Bellmore at the mill on June 11. Despite being copied the letter, Culbreth testified as follows:

> JUDGE FINE: Do you remember if you received a copy of this document?
> WITNESS: I don't remember. I must have. It was copied to me; but he asked me to verify from a June 10th letter whether it affected a conversation that took place on June 3rd.
> JUDGE FINE: Not the—right. Was it your understanding that the Union received the Asset Purchase Agreement after June 10th?
> WITNESS: I think PACE received it, but I don't even think Mr. Henry ever signed the Confidentiality Agreement.
> JUDGE FINE: All right. But PACE received it after June 10th; is that—does that make sense from what you . . . .
> WITNESS: It makes sense. Was I involved in it?
> JUDGE FINE: Do you know?
> WITNESS: No.

Culbreth testified that the Charging Party Unions maintained the position throughout negotiations that the Respondent should pay 2 weeks severance pay for all employees regardless of whether they were hired by DPC. Culbreth also testified that the Respondent maintained the position throughout the negotiations that the Respondent would not pay severance pay to persons who resigned from the Respondent's employ or who were hired by DPC following the sale at the same job with the same rate of pay.

The Respondent called as witnesses Steve Ames and Bruce Pinkham the former president and vice president of IAM Lodge 1009, who were former employees of the Respondent at the mill. I did not find their testimony concerning an alleged conversation with Bellmore during a break in negotiations on May 25 to be credible. First, Bellmore credibly testified that his brief May 25 conversation with Ames occurred at the end of a long caucus with the caucus lasting 5 to 6 hours. He testified that the caucus began around noon and that his conversation with Ames did not occur until after 5 p.m. Bellmore's testimony as to the length of the caucus was confirmed by Culbreth, who while on the witness stand, cited Bellmore's testimony as to the length of the caucus with approval. On the other hand, Ames estimated that the caucus was only around an hour in duration with Pinkham stating that it was only 10 or 15 minutes. The length of the caucus is important because Bellmore

[24] This line in the transcript appearing at page 359 actually reads, "Q Number two, did I send out something explaining it immediately? Answer: no." However, this was not a question posed to Foster, rather both sentences were in fact his testimony in response to a prior question, so I have corrected the transcript as set forth above.

credibly testified that he saw both Ames and Pinkham in the hotel bar drinking beer during the course of the caucus. Both Bellmore and Henry credibly testified that Ames showed signs of intoxication during the brief conversation at issue. Ames admitted that he was drinking beer during the caucus. When asked how many beers he had, Ames stated, "I didn't count them. Probably a couple of beers." When he was later asked if that was all he had Ames stated, "I can't remember, sir; it's a year ago." When asked if other IAM committee members were drinking at the bar, Ames stated that Lyle Clark and Tom Holl did not. I therefore credit Ames and Bellmore's testimony that Pinkham was drinking during the caucus, and I discredit his claim to the contrary.

Ames testified that, during the caucus, he along with the IAM committee were having a hard time in that "we didn't know why we needed 600 pages of the APA, ..."[25] Ames testified that this concern lead to a conversation with Bellmore outside the hotel. Ames testified as follows:

> WITNESS: When he walked out the door, I asked him, "Why are you insisting on the purchase agreement?" He said, "I want to get it in my attorney's—our attorney's hands." And they're going to file an unfair labor charge. And he said, "We are going to block the sale of this mill."
> JUDGE FINE: Was that the whole conversation; as you can recall it?
> WITNESS: As I can recall it.

Ames testified that he did not ask any followup questions, nor did any members of the Machinists group, who were present for the conversation. However, Ames also testified that, during this time period in and out of negotiations, Bellmore stated that he needed the requested information to examine the nature of the sale as to whether it was a stock transfer, asset transfer, whether there was a joint employer relationship between the two companies, and for effects bargaining.

Pinkham, who testified that he was present for the conversation, gave a different account of what was said than did Ames. According to Pinkham, Ames asked Bellmore what he was going to do with the APA, and Bellmore responded, "that he thought he could delay these proceedings and—and possibly block the sale." Contrary to Ames, Pinkham claimed that he asked a followup question by inquiring to Bellmore, "Do you really think you can do this?" and Bellmore said, "Yes." On cross-examination, Pinkham's testimony changed. He then testified that the general theme of the conversation with Bellmore was that PACE was going to insist on getting the requested information, that there might be unfair labor practice charges filed, and that this might delay or block the sale. Based on the forgoing, as well as considerations of demeanor, I did not find Ames and Pinkhams' versions of the May 25 conversation with Bellmore to be worthy of belief.

Bellmore testified that he did have a conversation with Ames on May 25, where Ames inquired about the need for the APA. Bellmore responded that APA was relevant to negotiations and that the PACE was not going to negotiate in the dark. Bellmore mentioned that the vacation issue was tied to the APA, and it was important to learn if there was any joint employer relationship, because Ames, along with his committee had raised the issue of whether the Respondent continued to have a relationship with Crabar at the Deferiet mill. Bellmore stated that one way to find that out was through the APA. Bellmore credibly denied telling Ames that he was requesting the APA to try to block the sale and he denied using the word delay during the conversation. Henry, who was present for the conversation, also credibly denied that Bellmore said anything about delaying or blocking the sale of the mill.

D. Analysis and Conclusions

1. Severance pay

a. Legal principles

In *Holly Farms Corp. v. NLRB*, 48 F.3d, 1360, 1368 (4th Cir. 1995), cert. granted in nonpertinent part, 515 U.S. 963 (1995), affd. 517 U.S. 392 (1996), the Fourth Circuit stated the following in enforcing a Board order:

> An employer's duty to bargain with its union encompasses the obligation to bargain over the following mandatory subjects—"wages, hours, and other terms and conditions of employment." 29 U.S.C. § 158(d); see id. § 158(a)(5). That obligation includes a duty to bargain about the "effects" on employees of a management decision that is not itself subject to the bargaining obligation. See *First Nat'l Maintenance Corp. v. NLRB*, 452 U.S. 666, 679–[6]82, 101 S.Ct. 2573, 2581–[25]83, 69 L.Ed.2d 318 (1981); *NLRB v. Litton Fin. Printing Div.*, 893 F.2d 1128, 1133–[11]34 (9th Cir.1990), rev'd in part on other grounds, 501 U.S. 190, 111 S.Ct. 2215, 115 L.Ed.2d 177 (1991). Where changes in employee working conditions constitute such a bargainable effect, an employer violates § 8(a)(5) and (1) of the Act by implementing those changes without bargaining with the union. See *Litton*, 893 F.2d at 1133–[11]34. The employer also violates § 8(a)(5) and (1) if it negotiates directly with its employees, rather than with their union representative, about such changes. See *EPE*, 845 F.2d at 491.

In *Holly Farms* the respondent was found to have violated Section 8(a)(5) of the Act when it announced that bargaining unit employees would be offered jobs in a merged operation under the working conditions of Tyson Food, Inc., the other entity involved in the merger. The court concluded that, "That announcement plainly changed a wide range of matters—including wages, hours, work rules, work schedules, and work locations—that go to the heart of the bargaining obligation under Section 8 of the Act." Id. at 1368. The court noted that following these announcements, the company sent letters to the employees offering them jobs as Tyson employees under Tyson's working conditions, and it met with groups of employees to discuss those working conditions. The court held that by its actions the company bypassed the union and negotiated directly with employees. The court also stated that "the Board reasonably concluded that the changes unilaterally established by Ty-

[25] Ames testimony here confirmed that of Bellmore that Culbreth had stated that the APA was 500 to 600 pages long in response to the Unions' information request. In fact, the APA was submitted into evidence and it is a 65-page document.

son concerned mandatory subjects of bargaining—'effects' of the nonbargainable decision to integrate Tyson's and Holly Farms' transportation departments. Accordingly, we enforce the Board's order to the extent that it found Tyson's refusal to bargain with the Union to be a violation of the Act." Id. at 1369.

In *NLRB v. Roll & Hold Warehouse & Dist. Corp.*, 162 F.3d 513 (7th Cir. 1998), a case involving the respondent employer's unlawful unilateral implementation of an attendance policy, the court held concerning notice by an employer of a new policy that:

> Notice will not be deemed adequate unless it permits a union to meaningfully negotiate over a new policy, *NLRB v. Emsing's Supermarket*, 872 F.2d 1279, 1286–[12]87 (7th Cir. 1989), and the determination of the adequacy of notice is essentially one of fact reviewed for substantial evidence. Id. Similarly, a union's demand to negotiate will be considered futile when an employer presents a new policy as a fait accompli, indicating that it is unwilling to deal with the union in good faith. *Ciba-Geigy Pharmaceuticals [Division]*, 264 NLRB 1013 (1982). The Board concluded that the Union did not need to make a bargaining demand because the attendance plan was presented as a fait accompli and additionally, because the Union's negotiating position had been seriously undermined when Roll dealt directly with its employees, thereby precluding meaningful negotiations. Id. at 519.

The court enforced the Board order finding a violation, although it indicated its skepticism that the policy was presented to the union there as a fait accompli. However, the court went on to state at pages 519 to 520 that:

> We find more convincing the Board's second reason for finding that no opportunity for meaningful negotiation existed here: that by presenting the plan directly to employees before notifying the Union, the Union's negotiating role was significantly undermined. *Detroit Edison Co.*, 310 NLRB 564, 565–[5]66 (1993). One of the purposes of early notification is to allow a union the opportunity to discuss a new policy with unit employees so it can determine whether to support, oppose or modify the proposed change. When an employer first presents a policy to its employees without going through the Union, the Union's role as the exclusive bargaining agent of the employees is undermined. See *Inland Tugs v. NLRB*, 918 F.2d 1299, 1311 (7th Cir. 1990). Under these circumstances it is more difficult for the Union to present a unified front during negotiations. See *Friederich Truck Service*, 259 NLRB 1294, 1299 (1982). Also, if the change proves popular among employees, direct dealing may convince them that union representation is unnecessary. See *Detroit Edison Co.*, 310 NLRB at 565–[5]66 (employer's direct dealing over working conditions "convey[ed] to employees the notion that they would benefit more, or receive greater consideration, without union representation").
>
> The ALJ found, and Roll does not dispute, that the Union only learned of the proposed attendance policy change during the process of Becker explaining it to the general workforce. The NLRB has previously held that this does not satisfy the special notice requirement. *Ciba-Geigy Pharmaceuticals*, 264 NLRB at 1017 (union not given proper notice where its representatives "became aware of [the policy] merely because they themselves were employees"). Additionally, Roll admitted that the small group meeting with employees involved "full blown discussions" of the new policy. The Board could reasonably infer from this that Roll was engaged in negotiations directly with employees before the Union learned of the new policy change. The Board concluded that at that point, damage had already been done to the Union's role as the employees' exclusive bargaining representative. In these circumstances, the Board has previously said that failure by the Union to demand bargaining does not waive their right to bargain. *Detroit Edison Co.*, 310 NLRB at 565–[5]66; see *Ciba-Geigy Pharmaceuticals [Division]*, 264 NLRB at 1017; see also *Gratiot Community Hosp.*, 312 NLRB 1075 (1993), enforced, 51 F.3d 1255, 1259–[12]60 (6th Cir.1995); *Intermountain Rural Elec. Ass'n v. NLRB*, 984 F.2d 1562, 1567–[15]68 (10th Cir. 1993); *Southwest Forest Industries v. NLRB*, 841 F.2d 270, 273–[2]74 (9th Cir. 1988).

b. Conclusions

In the instant case, the Respondent entered into the APA with Crabar and DPC for the sale of the Deferiet mill. The APA by its terms had an effective date of May 11, with a projected closing date of the sale to take place between June 1 and June 30. The APA also provided that the Respondent was to allow the purchaser to meet with the employees at the mill to present the employees with applications and a handbook. The Respondent, under the APA, was also supposed to provide the purchaser with space at the mill to "interview applicants and conduct employment-related testing."

On May 11, the Respondent's bargaining unit employees were told to report to the mill's human resources department. Once there they were given an application folder for employment with DPC, the purchaser of the mill, with a letter dated May 12 stapled to the top. The May 12 letter was signed by Records, the Respondent's vice president of organizational development, human resources, and corporate facilities. The May 12 letter and folder were distributed under the supervision of Watson, the Respondent's human resource manager of the mill. In order to receive the Records' letter and DPC application folder employees had to identify themselves and sign for the packet. Former Respondent employee Plummer's credited testimony reveals that he had to speak to Watson in order to obtain the packet.

The May 12 letter informed employees that the Respondent had agreed to provide space at the mill for DPC to interview applicants and conduct employee related testing. It stated that enclosed was a copy of DPC's employment application packet. It also stated that, "to be eligible for severance you must complete the application process (application, interview, testing, etc.) and be otherwise eligible in accordance with the terms of the severance plan." The DPC application folder contained a document that informed employees that anyone wishing to be considered for employment was required to "complete an application for employment, complete a paper an[d] pencil survey, undergo a drug screen, and participate in an interview."

The DPC packet contained a document entitled, "Applications-Testing Schedule." This document included a schedule for May 12 and 13, when the Respondent's employees were directed to report to a nearby hotel to participate in the application process. The evidence revealed that the vast majority of bargaining unit employees participated in the DPC application process on those dates, including being subjected to hair testing for drug use. The credited testimony revealed that prior to that time, the Respondent had only negotiated a for cause drug testing policy with PACE, not an across the board testing program as the employees were required to undergo as part of the DPC application process.[26]

I have concluded that by its actions on May 11, in distributing the Records' letter and the DPC application packet that the Respondent unilaterally instituted preconditions for severance pay, including applying for employment with DPC and undergoing drug testing as part of the application process, and that by engaging in such conduct the Respondent violated Section 8(a)(5) and (1) of the Act. Severance pay as a form of wages constitutes a mandatory subject of bargaining. See *Your Host, Inc.*, 315 NLRB 295 (1994); *Waddell Engineering Co.*, 305 NLRB 279 (1991); and *Continental Insurance Co. v. NLRB*, 495 F.2d 44, 49 (2d Cir. 1974). Implicit in a union's right to engage in effects bargaining is its right to bargain over severance pay. See *Los Angeles Soap Co.*, 300 NLRB 289, 295 (1990). Therefore, an employer violates Section 8(a)(5) and (1) of the Act when it engages in unilateral changes or direct dealing with employees concerning severance pay. The Respondent here unilaterally conditioned its employees' eligibility for severance pay on applying to and undergoing drug testing by another employer. Drug testing is a mandatory subject of bargaining and unilateral changes in drug testing policies violate Section 8(a)(1) and (5) of the Act. See *Tocco, Inc.*, 323 NLRB 480 (1997) (a change in drug testing policy to across the board testing violated Section 8(a)(5) of the Act); and *Sivells, Inc.*, 307 NLRB 986 (1992); *Seiler Tank Truck Service*, 307 NLRB 1090, 1100 (1992); *Mistletoe Express Service*, 300 NLRB 942 (1990); and *Johnson-Bateman Co.*, 295 NLRB 180 (1989).

The Respondent announced the sale of the Deferiet mill on May 11, and on that same date it distributed the Records' letter along with the DPC application instructions to approximately 440 employees in the combined PACE and Firemen and Oilers collective-bargaining units. The employees had to sign for application materials on May 11, and the application and drug testing process took place on May 12 and 13. There was no time here for the Unions to effectively consult with employees or to engage in meaningful bargaining over the Respondent's implementation of its preconditions for severance pay. As such, the Respondent's unilateral action constituted a fait accompli under Board law, and there was no requirement for the Unions to request bargaining over the Respondent's unilateral change. See *NLRB v. Roll & Hold Warehouse & Dist. Corp.*, supra; *NLRB v. Emsing's Supermarket*, supra; *Ciba-Geigy Pharmaceuticals Division*, 264 NLRB 1013 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983); and *Gratiot Community Hospital*, 312 NLRB 1075, 1080 (1993), enfd. 51 F.3d 1255 (6th Cir. 1995) pertaining to a unilateral termination of the hospital's scrub practice. See also *S & I Transportation, Inc.*, 311 NLRB 1388 fn. 1 (1993), where the Board affirmed the judge's conclusions that the respondent's changes in its payroll administration was presented as a fait accompli, and the union did not waive its right to bargain by failing to request it. The Board stated:

> Specifically, the Respondent's announcement directly to employees of unilateral action (the change in pay periods from weekly to biweekly) indicates its intent to make changes without bargaining with the Union.

I have also concluded that the Respondent engaged in unlawful direct dealing with bargaining unit employees by tendering to them the Records' letter conditioning severance on compliance with the DPC application process, without having first tendered these documents to the Unions. See *Detroit Edison Co.*, 310 NLRB 564 (1993), where the Board found the employer engaged in direct dealing by tendering a memo containing a sweetened proposal for phasing out a job classification directly to employees, since the employer had failed to first adequately present the proposal to their collective-bargaining representative. Here the Respondent not only informed employees via the Records' letter that completing the DPC application process including testing was a condition for receiving severance, it required the employees to sign for receipt of both the letter and the DPC application folder. The Respondent unilaterally instituted a process requiring employees to take affirmative actions in order to qualify for a benefit that was a mandatory subject of bargaining. Thus, the Respondent interjected itself between the employees and their collective-bargaining representatives thereby undermining the effects bargaining process with the Unions. See *Bridgestone/Firestone, Inc.*, 332 NLRB 575 (2000), where an employer was found to have engaged in unlawful direct dealing by requiring employees to sign forms as a condition for the employer releasing the employees' home addresses to a union. While the consolidated complaint here did not specifically allege a direct dealing allegation, I find that the Respondent's conduct here was part and parcel of its unlawful unilateral change and that it was closely related to that complaint allegation. I also find that it was fully litigated, and therefore it is appropriate and warranted in the circumstances here to find this additional violation of the Act. See *Blue Circle Cement Co.*, 319 NLRB 954, 962 fn. 10 (1995), enfd. in relevant part 106 F.3d 413 (10th Cir. 1997).

The Respondent's subsequent conduct during negotiations with the Unions confirms that it had no interest in bargaining over the implementation of its severance program. Despite the Respondent's conduct set forth above, Bellmore went to the mill on May 12, and asked Watson to have Culbreth call him to conduct effects bargaining. Thereafter, the Respondent, PACE, Firemen and Oilers, and Machinists Lodge 1009 met on May 24, 25, and 26, for effects bargaining. The credited evidence reveals that, during the May 24 meeting, officials of all three

[26] There was no record evidence as to what if any drug testing program had been in effect for Firemen's and Oilers' employees. However, I would note that there was no claim by the Respondent that it was theretofore entitled to engage in across the board testing of the employees in that bargaining unit.

Unions protested the Respondent's unilateral implementation of preconditions for severance including drug testing citing Records' May 12 letter. Bellmore requested on several occasions during the meeting that the Respondent rescind the conditions set forth in the letter, but was rebuffed by Culbreth. Moreover, during the meeting, Culbreth provided Bellmore with a proposed "Effects of Sale Agreement" which included a severance plan that incorporated the aspects of Records' letter that the Unions were protesting. That is in order for an employee to be eligible for severance benefits they had to apply to DPC, fully participate in the application process, and pass a drug test administered by DPC. Bellmore protested that Respondent's severance proposal was a continuation of the unlawful policies the Respondent had implemented in its May 12 letter. However, Culbreth stated that the plan had been submitted to ERISA, and that he was not interested in rewriting the policy, which would require approval and take several months. The Unions' protests and requests that the Respondent rescind the severance preconditions continued on May 25. At that point Henry joined in, with Culbreth admitting that Henry accused the Respondent of engaging in unlawful conduct, and Watson testifying that Henry's protest centered on the conditions imposed by the May 12 letter and the severance policy. However, the Respondent continued to refuse to rescind its preconditions.

During the May 24 to 26 meetings, the Unions made information requests centering on receiving a copy of the APA. Following those meetings a chain of correspondence issued between the parties concerning the Unions' continuing protests over the Respondent's unilateral implementation of its severance policies, as well as the Unions' information requests. By letters dated May 28, June 4, June 7, and June 9, PACE repeated its requests that the Respondent rescind the severance preconditions it had implemented by its May 12 letter. In the June 9 letter, PACE Attorney LaVaute told Respondent Attorney Foster that the Respondent "should advise the employees, in the same manner as they were given the conditions, that the conditions set out in the May 12 letter are withdrawn, and bargain in good faith with the Union."

On June 10, Foster faxed a response to LaVaute stating that Respondent was willing to accept PACE' proposed confidentiality agreement for the provision of the APA, to allow bargaining to resume "on or before June 11." Foster also attached a memo dated June 10, which he stated was posted at the Deferiet mill in "addressing the concerns relative to the May 12, 1999 letter."[27]

The Respondent's June 10 memo to employees did not cite the May 12 letter, rather it stated that it was written to "clarify apparent misunderstandings that have arisen concerning severance pay . . . ." The memo pointed out that there was a severance pay policy for salaried employees and that IAM Lodge 1009 had reached agreement with the Respondent concerning severance pay. The memo stated that there were no severance pay provisions in effect for employees represented by the Charging Party Unions and that any severance pay and conditions for the receipt thereof had to be negotiated with the respective unions. The memo stated that negotiations between the Respondent and the Charging Party Unions took place during May 24 to 26, and had been in recess since. It stated that the Respondent had been available to meet since May 26 to the present.

The Respondent's June 10 memo neither met the PACE' repeated request that the Respondent rescind its May 12 letter, nor did it meet the Board's requirements to absolve a respondent from liability for the commission of unfair labor practices. In order to escape liability, a respondent's disavowal of unlawful conduct must be timely, unambiguous, specific in nature to the coercive conduct, and free from other proscribed illegal conduct. Furthermore, there must be adequate publication and assurances given to employees that the respondent will not violate the Act. See *Passavant Memorial Area Hospital*, 237 NLRB 138, 138–139 (1978). Accord: *Sam's Club*, 322 NLRB 8, 9 (1996), enfd. 141 F.3d 653 (6th Cir, 1998). The Respondent's June 10 memo does not acknowledge that it engaged in direct dealing or that it failed to bargain with the Unions prior to its unilateral implementation of its preconditions for severance pay, including across the board drug testing. The Respondent's June 10 memo was untimely in that it issued the day before closing of the sale despite numerous requests by the Unions for prior action. The Respondent's premise of the letter that there was a misunderstanding clearly does not meet the Board's requirement of repudiation of its unfair labor practices. See *Branch International Services*, 310 NLRB 1092, 1105 (1193), enfd. 12 F.3d 213 (6th Cir. 1993). The Respondent also did not inform employees that it would not engage in further unfair labor practices. Rather, by the memo the Respondent continued in its course of conduct of attempting to drive a wedge between the Unions and their members by casting the blame on the Unions for the lack of a severance program for their membership. The Respondent also implied that the Unions were at fault for the breakdown in negotiations while at the same time pointing out that its other employees had a severance program in effect.

c. The Respondent's defenses

The Respondent contends that the Charging Party Unions were afforded adequate notice of the impending sale of the Deferiet mill and the opportunity to bargain over the effects on

[27] Culbreth had previously faxed Bellmore a letter on June 4 stating that the Respondent's effects bargaining proposal would be withdrawn on June 11 absent good faith bargaining by the Unions or an agreement prior to that date. The General Counsel asserts in his brief that I should conclude that these June 11 deadlines proffered by the Respondent's representatives were not fortuitous, and that the Respondent was aware that June 11 was the scheduled closing date of the sale at the time these letters issued. I have concluded that the General Counsel is correct in this assertion and that the Respondent failed to inform the Unions of the scheduled closing date at the time that it became aware of it and that the Unions were not so informed until the date of the closing. I have also concluded that the Respondent engaged in dilatory negotiations with the Unions over the provision of the APA and relented in terms of posting its June 10 memo to employees as close to the closing date as possible in an effort to prevent bargaining prior to that date. In this regard, the Respondent was aware that the Unions would lose a good deal of their negotiating power after the closing date for the sale of the mill.

bargaining unit employees. The Respondent asserts that the evidence shows that the Unions learned of the sale on May 11, and that Culbreth called Bellmore and Henry on May 12 in an effort to initiate bargaining. However, despite Culbreth's requests to meet earlier the Unions were not able to meet until May 24. Moreover, although the Unions were made aware of the sale on May 11, the sale did not close for another 30 days until June 11. I have concluded that the Respondent having informed the Unions of the sale a month before closing did provide the Unions with timely notice of the sale. Therefore the allegation of the consolidated complaint contending that the Respondent failed to give the Unions timely notice of the sale is dismissed. See *Associated Constructors*, 325 NLRB 998, 1010 (1998), enfd. 193 F.3d 532 (D.C. Cir. 1999).

However, I have also concluded that the Respondent failed to provide the Unions with an opportunity to engage in effects bargaining as alleged in the complaint. In this regard, the same day it announced the sale the Respondent unilaterally implemented preconditions to the receipt of severance pay including across the board drug testing by the purchaser and the Respondent engaged in direct dealing with employees as part of its implementation of these preconditions. As such the Respondent's actions undercut the Unions' ability to bargain. *Associated Constructors*, id. at 1010. The Respondent's claims that the Unions' failed to inform the Respondent of problems concerning the issuance of the May 12 letter until May 24, or that the Unions declined Culbreth's invitation to meet at an earlier date miss the mark. The May 12 letter was issued by the Respondent's officials who were its admitted agents and supervisors, and therefore the Respondent had full responsibility for its unlawful conduct. Moreover, since the letter and its preconditions for severance were issued as a fait accompli, under the case law set forth above, the Unions were under no obligation to request bargaining with respect to the Respondent's unlawful conduct. Finally, the Unions repeated requests beginning on May 24 that the Respondent rescind the conditions set forth in the May 12 letter were met with stiff resistance by the Respondent signifying that any prior requests by the Unions would have been futile acts. Accordingly, I have concluded that the Respondent failed to accord the Unions an opportunity to engage in effects bargaining in violation of Section 8(a)(5) and (1) of the Act.

I do not credit the Respondent's claims that the May 12 letter was issued by inadvertence to the bargaining unit employees. The Respondent asserts that Foster's testimony reveals that the letter was intended only for distribution to salaried personnel with their DPC application folders. It asserts that, at the time of the distribution of the May 12 letter, Respondent policy 830, a severance plan for salaried employees, was the only plan in effect and that was the severance plan referenced in the letter. The Respondent points out that Watson's testimony reveals that she did not receive any instructions for distribution with the May 12 Records' letter, which was faxed to her the morning of May 11 and she received the DPC application materials 2 or 3 days earlier. The Respondent states that on May 11, Watson and her staff began distributing the May 12 letter and the DPC application materials to all mill employees including those represented by the Unions.

There are several factors, in addition to demeanor, that have made me discredit Foster's testimony that the May 12 letter was mistakenly delivered to the bargaining unit employees. First, I find the repeated claims by the Respondent's officials of lack of knowledge of what was occurring to be disingenuous. For instance, Culbreth testified that he was unaware of the May 12 letter when negotiations began, and then altered his prior testimony to assert that after he was shown the letter that he did not know that testing referenced in the letter referred to drug testing. He testified that he never read the APA and that he had not seen the DPC application materials until he took the witness stand, which was a year after these materials were distributed to the unit employees. Culbreth also testified that when he made the June 3 phone call to Bellmore seeking to meet the next day that he did not know that PACE had not received the APA. Yet, Culbreth authored a letter to Bellmore on June 4 blaming PACE for the failure to negotiate a confidentiality agreement which he had previously informed the Unions they had to sign to receive the APA. Second, the APA at section 8.1 provides that the Respondent was supposed to facilitate DPC's application process among its employees. The Respondent obligated itself to permit DPC to meet with employees at the mill and present employees with applications and a handbook and the Respondent was to provide DPC with space at the mill to interview applicants and conduct employment-related testing. The APA did not limit these responsibilities to salaried employees and the requirements of the May 12 letter were very similar to those set forth in the APA. Foster also admittedly took no action in explaining to bargaining unit employees that the May 12 letter had been improperly distributed to them when he learned that they had received it. Finally, regardless of the Respondent's intent concerning the letter's distribution, Records, the signer of the letter, Foster its author, and Watson its distributor were high level management officials and admitted statutory supervisors and agents for the Respondent when it was distributed. The Respondent was clearly responsible for their distribution of the May 12 letter and it refused to disavow the letter's content to unit employees despite repeated requests by the Unions that it do so. Accordingly, I do not credit Foster's self-serving testimony that the letter was distributed to the bargaining unit employees by mere inadvertence, and find that the Respondent was responsible for its distribution even if it was done as a result of mistake as the Respondent contends.

I also reject the Respondent's contention that the May 12 letter did not impose conditions of employment. The Respondent asserts that it could not impose preconditions to a severance plan for bargaining unit employees when there was no severance plan in effect. The employees were told by the May 12 letter that to be eligible for severance you must complete the DPC application process including testing, which the letter's accompanying materials revealed was drug testing. The application process and the drug testing began the next day. The Respondent distributed the letter to over 400 bargaining unit employees, who would not have had time to parse such fine distinctions such as the existence of severance plan, before they were obligated to participate in the application process or forfeit any future severance pay. Moreover, the Respondent's assertion that it did not have a severance plan in effect for bar-

gaining unit employees does not eliminate the import of the letter. In this regard, the letter stated that the employees had to participate in the applications process in order to be "eligible for severance." Thus, the letter did not state that employees would receive severance if they completed the application process. Rather, it stated that they would not receive severance if they failed to complete the process. Thus, the Respondent had unilaterally set preconditions for severance pay, whether it had a plan in effect or intended to negotiate a plan with the Unions. Finally, the severance plan that the Respondent proposed and steadfastly adhered to during negotiations contained the same preconditions set forth in the May 12 letter.[28]

The Respondent contends in its brief that its efforts to bargain over the effects of the sale on its employees were hindered by the "Charging Parties' delaying and evasive tactics." The Respondent asserts that the Unions failed to raise complaints about the May 12 letter prior to May 24, and Bellmore failed to raise his information request pertaining effects bargaining until the very last item on his agenda at the May 24 meeting. Bellmore's May 24 agenda states that he was requesting the purchase agreement and "any accompanying exhibits." The Respondent asserts the Unions' information request expanded by a letter tendered to the Respondent on May 25. The letter requested that the Respondent provide the Unions in 3 days, "copies of all agreements, correspondence or other written memoranda between your company" and DPC "relating to the sale of the mill and the possible or agreed to terms of that transaction." The letter stated that the Unions needed the documents to negotiate with the Respondent "over the sale transaction and its effects on unit employees . . . ." The Respondent contends that the Unions' intention was to engage in decision bargaining and cites Bellmore's May 27 fax to Culbreth where Bellmore in discussing the Unions' information request states:

> Depending on the nature of the transaction between your company and the purchaser, and the identity of the principals involved, and the provisions of the sale documents(s), there is a possibility that Champion would have an obligation to bargain over the decision to "sell" the mill, or there may even be an argument that because of the nature of the transaction and the legal relationship between the seller and the buyer, the existing labor agreement continues to be applicable.

I do not find the Respondent's argument persuasive. Bellmore's letter went on to state that a review of the requested documents might lead to the conclusion that the only remaining issue between PACE and the Respondent was effects bargaining and that PACE needed to review the documents to determine if that was the case. The Unions' efforts to fully explore their rights pertaining to the representation of bargaining unit employees does not demonstrate that they engaged in bad faith bargaining over effects of the sale, or that they sought to delay that process. Additionally, I do not find the Unions' inability to meet until May 24, or their failure to make their initial information request until that date sufficient to establish that the information requests were made in bad faith or that the Unions were intentionally seeking to delay negotiations. In this regard, Bellmore met with Watson on May 12 in an effort start negotiations. While in his discussions with Culbreth that evening, Bellmore stated that he could not meet until May 24, the Respondent was also not able to provide the Unions with a definite closing date for the sale at that time or thereafter. I also note that while the Unions' information requests changed during the negotiations, the relevance of the requested materials was explained to the Respondent and the additional requests were in large part based on information the Unions obtained during negotiations.

The initial unfair labor practice charges filed by the Charging Party Unions on May 28 and June 1, alleged, in part, that the Respondent violated Section 8(a)(5) of the Act by "failing to provide notice and to bargain over an alleged divestiture transaction of the Deferiet Mill," and by "refusing to provided relevant information requested by the Union." By letter dated January 6, 2000, the Region Director informed the Respondent that she had approved PACE' request to withdraw these aspects of its charge.[29] There is no allegation in the consolidated complaint that the Respondent failed to supply or delayed in supplying the Unions with requested information. I also advised counsel for the General Counsel during the course of the hearing that I would not find such a violation unless the General Counsel moved to amend the complaint and such motion was approved. Counsel for the General Counsel never made such a motion. Since the General Counsel controls the scope of the complaint it is not necessary for me to reach PACE' contention in its post-hearing brief that the Respondent violated the Act by delaying or refusing to provide the Unions with requested information. See *West Virginia Baking Co.*, 299 NLRB 306 fn. 2 (1990), affd. 946 F.2d 1563 (D.C. Cir. 1991); and *Winn-Dixie Stores*, 224 NLRB 1418, 1420 (1976), affd. in pertinent part 567 F.2d 1342, 1350 (5th Cir. 1978).

The General Counsel asserts that the Respondent's refusal to rescind the preconditions for severance was coupled with other conduct which, while not alleged in the consolidated complaint as independent violations of the Act, indicates that Respondent did not act in good faith in the effects negotiations. The General Counsel asserts that the Respondent refused to furnish the Unions with the APA, initially stating that the document could not easily be obtained from corporate headquarters because it was 500 to 600 pages long, although the document was in fact only 65 pages. It is contended that the Respondent also raised disingenuous confidentiality concerns about the disclosure of

[28] The case *National Family Opinion, Inc.*, 246 NLRB 521, 530 (1979), cited by the Respondent does not require a different result. The judge found there, with Board approval, that the respondent's proposal of an improved severance package on condition that the union waive further employment and future bargaining rights did not violate the Act. The judge noted that the respondent did not condition effects bargaining on the union's agreement to those terms. In the present case, the Respondent unilaterally implemented preconditions to severance pay and engaged in direct dealing with employees prior to meeting with the Unions. The Respondent here went beyond conditioning further bargaining on the Union's acceptance of its preconditions to severance. Rather, it implemented them as a fait accompli and thereafter refused the Unions' requests to rescind them.

[29] The record contains no evidence as to the disposition of these allegations pertaining to the Firemen and Oilers' charge.

information contained in the APA.[30] It is contended that the Respondent also informed the Union that the APA was not relevant, but that it was clear that it was relevant to negotiations once it was provided to PACE as it contained provisions directly bearing on severance benefits, the severance preconditions, and other mandatory terms for effects bargaining. Counsel for the General Counsel cites the following provisions of the APA at page 16 of his brief wherein he states that:

> Specifically, page 8 of APA refers to "Special Severance Policy(s)," and states that Respondent cannot negotiate any severance policy with Unions more favorable than "Policy #830" without approval of DPC. APA Section 8.3 (page 50) states that DPC will be responsible for severance costs if more than 10 percent of Respondent's employees do not apply for employment with, or are not hired by, DPC. The APA includes other terms relevant to effects bargaining, including Section 8.5 (page 51), in which Respondent and DPC had agreed that DPC would be responsible for employees' accrued unpaid vacation pay. (GC Exh. 26.)

As set forth above, I do not find that the Respondent has established that the Unions' made their information requests in bad faith here. The Board has held that an employer has an obligation to furnish a union information relating to a proposed or completed sale, including sales agreements. See *Compact Video Services*, 319 NLRB 131, 142–143 (1995), enfd. 121 F.3d 478 (9th Cir. 1997); *Live Oak Skilled Care & Manor*, 300 NLRB 1040, 1049 fn. 20 (1990); *Westwood Import Co.*, 251 NLRB 1213, 1226–1227 (1980), enfd. 681 F.2d 664 (9th Cir. 1982); *Washington Star Co.*, 273 NLRB 391, 396 (1984); and *RBH Dispersions*, 286 NLRB 1185 (1987). Here, as counsel for the General Counsel points out there were several provisions of the APA that related to effects bargaining. The Respondent also denied Bellmore's request during the May 24 session to pay the employees' accrued unpaid vacation pay with the contention that DPC had agreed to assume that liability. The Unions informed the Respondent that they needed the requested information to engage in effects bargaining, to see if there was a joint employer relationship between the Respondent and DPC, and to determine if the Respondent was obligated to engage in decisional bargaining. The fact that the Unions did not prevail on the decisional bargaining aspect of their charges before the Region does not establish that the reasons advanced for the requested information including its usage for effects bargaining were made in bad faith. For the Unions were entitled to obtain the documents to determine whether the Respondent had more of an obligation than to just bargain over the effects of the sale.[31]

I have also concluded that the Respondent does not come with clean hands as to any delay resulting from the Unions' information requests. The credited evidence reveals that when Bellmore initially requested the APA, Culbreth misinformed him by stating that a 65-page document was 500 or 600 pages. While the Respondent contends in its brief that Culbreth was also referring to the attachments to the APA, which its asserts were covered by the Unions' initial information requests, it never submitted the attachments into evidence to verify the claim of their length. The Respondent also failed to establish that the referenced attachments were ever provided to the Unions.

The Respondent claimed confidentiality as to its initial refusal to provide the Unions with the APA. While the Unions requested the document on May 24, it was not provided to PACE until June 11, the closing date of the sale of the mill.[32] The delay in furnishing PACE with a copy of the APA was caused by the Respondent's conditioning the Unions' receipt of the document on their entering a confidentiality agreement. Yet, I have my doubts as to the bona fides of the Respondent's confidentiality claim. For, its attorney drafted a proposed confidentiality agreement limiting the Unions' use of the APA solely to effects bargaining, thereby precluding them from using it in any litigation including Board proceedings related to the sale. PACE protested these limitations, and by letter dated June 8 Foster stated that the Respondent had turned a copy of the APA over to the Board's Regional office in response to the Unions' unfair labor practice charge. However, he continued to insist that PACE withdraw paragraph 5 from its proposed confidentiality agreement which would have allowed PACE to use the APA in furtherance of NLRB and court litigation. While the Respondent eventually relented and allowed PACE to retain paragraph 5 of its proposed agreement, the Respondent only provided the APA to PACE on June 11, the day the sale closed. The Respondent's actions including its willingness to tender the APA to the Region when it was in its interest to do so render its confidentiality claim as suspect. Rather, the Respondent's confidentiality claim appears to be pretextual and part of an effort to prevent the Unions from initiating lawsuits against the Respondent based on the APA. The confidentiality claim also served as a means of legitimizing the Respondent's failure to provide the Unions with the APA prior to the date of the sale. See *NLRB v. Compact Video Services*, 121 F.3d 478 (9th Cir. 1997), where the court held that the respondent's bare assertion that a sales agreement contained confidential information was insufficient to overcome the Board's conclusion that the information contained in the document was relevant to the union and must be provided.

I have concluded that the Respondent's delay in furnishing the Unions here with a copy of the APA was part and parcel of its refusal to bargain in good faith. The General Counsel failed to

[30] Counsel for the General Counsel cites R Exh. 13 in his brief in support of this argument. However, this exhibit was not admitted into evidence based on an objection by PACE' attorney and therefore I have not considered its contents in rendering this decision.

[31] I do not find that the cases cited by the Respondent require a different result. For example, in *Desoto Inc.*, 273 NLRB 788 (1986), the Board held that the respondent satisfied its obligations to bargain about effects of its sale. The Board noted that the respondent engaged in and was ready and willing to engage in effects bargaining. However, the union there chose to discuss the decision to close, not the effects, and requested information related to the decision to close. In the instant case the Unions' information request related to effects bargaining although the Unions' maintained that it could also be helpful to determine if they had a right to bargain over the sale decision.

[32] The record fails to establish that the APA was ever provided to the Firemen and Oilers.

amend the complaint to allege that this action by the Respondent independently violated Section 8(a)(5) of the Act. I am therefore constrained not to issue an affirmative finding of a violation on this aspect of the Respondent's conduct. However, the Respondent placed the Unions' information request at issue here as part of its defense, and the matter was fully litigated. I have therefore concluded that the Respondent's delay in providing the requested information, as well as its refusal to rescind its unilateral institution of its preconditions for severance were part and parcel of its determination not to engage in good faith bargaining with the Unions over the effects of the sale.

In sum, the Respondent engaged in unilateral conduct and direct dealing with employees concerning severance pay on the day it announced the sale. This conduct undermined the Unions' ability to effectively bargain over the effects of the sale. The Unions repeatedly protested the Respondent's actions during the course of bargaining and the Respondent refused to remedy or rescind its prior unlawful unilateral actions. The Respondent has failed to establish that the Unions' information requests were made in bad faith, and I have concluded that it was the Respondent's unremedied unfair labor practices that undercut the Unions' effectiveness and caused the breakdown in negotiations. Accordingly, I reject the Respondent's claims that it was the Unions and not the Respondent that engaged in bad faith bargaining here, and I conclude that the Respondent violated Section 8(a)(5) and (1) of the Act as set forth above.

2. The Respondent's failure to pay employees earned vacation pay at the time of the sale

Section 17 of the PACE collective-bargaining agreement contains terms governing vacation pay for employees. Section 17.1 of the agreement states that the vacation period for employees is from May 1 to May 1 each year. Under the agreement, the length of an employee's vacation is based on continuous years of service, ranging from 2 to 6 weeks of vacation. Section 17. 8 states that employees receive vacation pay for each week of vacation equal to 2 percent of the previous calendar year's earnings.

Section 17.10 of the collective-bargaining agreement states:

> Employees who retire, resign from the Company, die or are terminated will be granted vacation pay for the current vacation period pro-rated on the basis of one-twelfth (1/12) normal vacation pay for each full month completed on the active payroll by the employee figured on the employee's last W-2 statement of earnings prior to the employee's official date of termination.

Burto, a PACE local union officer and a former employee of Respondent, was employed by DPC at the time of his testimony. Burto's credited testimony revealed that, at the time of DPC's takeover of the mill in June 1999, he had 3 days of accrued unused paid vacation time remaining with the Respondent. Burto received payment for the 3 days vacation pay on May 18, 2000, from DPC, not the Respondent. Burto also received on May 18, 2000, from DPC payment of the pro-rata share of the vacation pay that was owed him for one month of work under section 17.10 of the PACE collective-bargaining agreement with the Respondent.

Burto's credited uncontradicted testimony revealed that the approximately 70 PACE unit employees who were not hired by DPC were paid by Respondent for all of their accrued vacation pay at the time of their termination from Respondent's employment in June 1999. Burto testified that in the past when employees were terminated from the Respondent's employ they would receive their vacation pay at the time of their termination. However, Respondent unit employees hired by DPC did not receive their accrued vacation pay owed them by Respondent, including the section 17.10 pro-rata share of the current year's vacation pay, until May 18, 2000, when they were paid by DPC. Burto testified that employees had scheduled vacation with the Respondent were allowed to take those vacations with DPC up to 4 weeks, and that the employees were paid for the unused vacation time with the Respondent by DPC at the rates established by PACE's collective-bargaining agreement with the Respondent. Burto testified that in the past employees who did not take their scheduled vacation with the Respondent were paid back at the end of the vacation year, which also would have been in May. He testified that DPC's vacation policy was different from that under the Respondent's collective-bargaining agreement. For example, while working at DPC an employee could only earn a maximum of 4 weeks vacation.

Bellmore's credited testimony reveals that during the May 24 and 25 bargaining sessions he requested that Respondent cash out and pay all employees for earned and accrued vacation at the time of the sale citing the parties' collective-bargaining agreement. This was one of the items on Bellmore's typewritten agenda that he presented at the May 24 meeting. However, Culbreth refused stating that the Respondent had negotiated an agreement with DPC that the latter would assume the responsibility for the employees' vacation pay. Bellmore protested the Respondent's position on both May 24 and 25, stating that the Respondent could not void the provision in the collective-bargaining agreement concerning vacation pay.

The Respondent contends that PACE's failure to file a grievance as to the failure to pay vacation pay indicates acquiescence with the Respondent's interpretation of the contractual vacation pay provisions. It also contends that since PACE did not file the charge over the vacation pay issue until September 15, it had accepted the benefits of the prepurchase scheduled vacations that were taken until that time. The Respondent argues that any disagreement "could, and should have been grist for the grievance and arbitration mill." The Respondent contends that it would not effectuate the purposes of the Act for the Board to get involved in the "belated interpretation of collective-bargaining agreement provisions, particularly where, as here all vacations has [sic] been taken and/or paid for."

In *Resco Products*, 331 NLRB 1546 (2000), the Board held that a respondent employer violated Section 8(a)(5) of the Act by failing to make contractually required payments of accrued vacation pay to employees when it sold its plant. The Board held that:

> We agree with the judge that Resco violated Section 8(a)(5) by failing to pay accrued vacation pay to employees who accepted employment with VMPC. As the judge noted, Resco could not avoid its obligations under the col-

> lective-bargaining agreement, without the Union's assent, simply by contracting with VMPC to assume them. Resco's failure to make the payments, especially after the Union explicitly demanded payment by filing a grievance, amounts to a complete abrogation of its contractual obligations in this regard. Id., slip op. at 2.

The Board stated that, "It is well settled that the Board may interpret the terms of a collective-bargaining agreement in order to determine whether an unfair labor practice has been committed." Id., slip op. at 3. The contract language at issue there read that "any employee quitting or discharged shall be paid the pro-rata part of his earned vacation." The Board noted that the respondent posited no reasonable interpretation of the contract language that the employees were not due their vacation pay at the time that their employment with the Respondent ceased. In this regard, the Board stated that "'Discharged' and 'terminated' are widely used synonymously." Id., slip op. at 3.

The Respondent here has posited no reasonable interpretation of its collective-bargaining agreement with PACE other than it owed its employees accrued vacation pay at the time of the sale when it terminated their employment. In fact the record shows that it paid bargaining unit employees, not hired by DPC, accrued vacation at the time of the sale. The Respondent had also paid employees in the past their vacation pay at the time of their termination.

The Respondent's contention that the PACE waived its statutory right pertaining to this unilateral change by its failure to file a grievance lacks merit. The credited testimony established that Bellmore vigorously protested the Respondent's conduct regarding vacation pay during the May 24 and 25 bargaining sessions. The Union filed a timely charge on the issue, and its failure to file a grievance did not clearly and unmistakably waive its statutory right to come to the Board with respect to this unilateral change. I would note that the parties' collective-bargaining agreement expired on June 1 and the Respondent's employees were not terminated until June 11. Whether or not the collective-bargaining agreement was automatically renewed by its terms, the Board has repeatedly held that, with except for limited exceptions not applicable here, a party is not free to make unilateral changes in terms and conditions of employment following the expiration of a collective bargaining agreement. See *Hacienda Resort Hotel & Casino*, 331 NLRB 665, 666 (2000). The Respondent has also not raised deferral as an affirmative defense and it has not offered to arbitrate the dispute over vacation pay. Moreover, the contract language that the employees were entitled to their vacation pay is clear and the Respondent engaged in a series of unilateral changes undermining the bargaining relationship at the time of the sale. I have concluded that under the facts here, PACE was entitled to pursue the matter concerning vacation pay by the filing of an unfair labor practice charge.

I do not agree with the Respondent's assertion that since the employees were ultimately paid by DPC for all vacation pay that it renders this matter moot. First, the employees were contractually entitled to payment at the time of the sale and the Respondent's unilateral change in failing to pay them was part and parcel of its conduct serving to undercut PACE in the eyes of its membership. Moreover, the employees lost the immediate use of the money in that DPC did not pay them until a year after it was due. The General Counsel and PACE assert that the employees should be made whole by being paid the interest owed them for the time lost by the Respondent's failure to pay the employees in a timely fashion. I concur with this position and find that the Respondent violated Section 8(a)(5) and (1) of the Act by its failure to pay employees accrued vacation benefits at the time of the June 11 sale.

THE REMEDY

I find, as the General Counsel and PACE request in their post-hearing briefs, that the Board's remedy in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), is warranted here because that is the traditional remedy when a Respondent fails to lawfully engage in effects bargaining. The Respondent unilaterally implemented preconditions for the receipt of severance pay the day it announced the sale. The preconditions included the requirement that employees apply to the purchaser and fully participate in the application process, which included across the board drug testing. The Respondent implemented these policies by engaging in direct dealing with employees and scheduling them to undergo this application process beginning the day following its announcement. The Unions, through Bellmore, requested effects bargaining the day after learning of the sale, and when the parties met the Unions vigorously protested the Respondent's unlawful conduct.

I have considered and rejected the Respondent's contention in its brief that a *Transmarine* remedy should only apply in circumstances where an employer fails to give a union timely notice of a sale or closure thereby precluding effects bargaining. To hold as such would allow an employer to use timely notice to a union as a shield while it engaged in unlawful conduct such as what was done here that effectively undercuts effects bargaining. Accordingly, I find that the Board's traditional *Transmarine* remedy is warranted in the circumstances of this case.

In finding a *Transmarine* remedy warranted, I note that the Respondent's bargaining unit employees were impacted by the sale in that DPC did not extend employment offers to all of the Respondent's employees. Moreover, as to those employees that it did offer employment, DPC announced in advance that it was not adopting the Respondent's collective-bargaining agreements with the Unions. In *Sea-Jet Trucking Corp.*, 327 NLRB 540, 548 (1999), rev. denied mem., the following rationale was stated for the requirement of a *Transmarine* remedy:

> Furthermore, as a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to relocate, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.
>
> Accordingly, it is necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain

> with the Union concerning the effects of the relocation of its facility on its employees, and to accompany the order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. The Respondent should therefore be required to pay backpay to employees in a manner similar to that required in *Transmarine Navigation Corp.*, supra.

In affirming the judge's conclusion that a *Transmarine* remedy was warranted, the Board stated as part of the remedy pertaining to backpay that "in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest." Id., slip op. at 1. The Board provided for this minimum 2-week backpay remedy with no deductions for interim earnings, although all of the respondent's employees had been offered the right to relocate to the respondent's new facility.[33]

The judge in *Sea Jet*, supra, specifically rejected the Respondent's contention that a *Transmarine* remedy was not appropriate because it offered all its employees jobs. The judge stated that the "Respondent's argument is premised upon the erroneous assumption that the purpose of the *Transmarine* remedy is to compensate employees for lost earnings. However, as the Board made clear in *Transmarine* the purpose of the remedy is not only to compensate the employees but to restore to the Union the bargaining leverage it would have enjoyed in the absence of the employer's unfair labor practices. Id., slip op. at 10.

The judge went on to state:

> Also, the Respondent argues that in awarding the *Transmarine* remedy in *Live Oak Skilled Care & Manor*, supra, the Board stated that it was not deciding 'whether the remedy providing for a minimum of 2 weeks' backpay in *Transmarine* is warranted for all effects bargaining violations, regardless of loss.' 300 NLRB at 1040. However, the Board has consistently followed *Live Oak Skilled Care & Manor[,]* in subsequent cases involving the sale by an employer, where the successor retained the bargaining unit employees.

I reject the Respondent's claim that interim earnings should be deducted from the 2-week minimum backpay period the Board has repeatedly provided for in instances where it has applied the *Transmarine* remedy. In *Willamette Tug & Barge Co.*, 300 NLRB 282, 287 (1990), cited by the Respondent, the judge with Board approval, ordered the traditional 2-week backpay minimum as part of the *Transmarine* remedy. *Raskin Packing Co.*, 246 NLRB 78, 80 (1979), cited in *Willamette* is distinguishable from the facts here because the respondent there closed in somewhat of an emergency situation which the Board concluded legitimized its inability to give the union prior notice of the closure.

Accordingly, I find that the Respondent should pay limited backpay in accordance with the Board's remedy in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as amended by the Board in *Melody Toyota*, 325 NLRB 846 (1998), by requiring that the Respondent pay employees in the PACE and Firemen & Oilers bargaining units at their normal rate of pay beginning 5 days after the Board's decision until the first of four events: (1) the date Respondent bargains to agreement with the Unions on those subjects pertaining to the effects of the sale of its Deferiet mill; (2) a bona fide impasse in bargaining; (3) the Unions' failure to request bargaining within 5 days after receipt of this Decision and Order, or to commence negotiations within 5 days of Respondent's notice of desire to bargain with the Unions; (4) the Unions' subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the June 11, 1999, takeover of the facility by Deferiet Paper Company to the time they secured equivalent employment elsewhere, or the date on which Respondent shall have offered to bargain in good faith, whichever occurs sooner, provided, however, that in no event, shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in Respondent's employ. Backpay shall be based on earnings which the employees would have normally received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Additionally, I find that the Respondent shall make whole any of its employees in the PACE bargaining unit who were not paid accrued or other contractual vacation pay by the Respondent or DPC due and owing as a result from their June 11, 1999, termination from the Respondent's employ. I also find that all employees in the PACE bargaining unit who were paid said vacation pay by DPC for sums owed them by the Respondent shall be made whole by the Respondent for the delay in payment by the payment of interest as computed in *New Horizons for the Retarded*, supra.

CONCLUSIONS OF LAW

1. Champion International Corporation (the Respondent) at all times material herein is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Paper, Allied-Industrial, Chemical & Energy Workers International Union, and its affiliated Locals 45 and 56 (PACE), and the National Conference of Firemen & Oilers/SEIU International Union and its affiliated Local 349 (Firemen and Oilers) are each labor organizations within the meaning of Section 2(5) of the Act.

3. (a) At all times material herein until around June 11, 1999, the following employees of the Respondent, herein called the PACE unit, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> Certain employees at the Deferiet Paper Mill as described in Section 4.1 of the collective-bargaining agreement between

[33] See also *Live Oak Skilled Care & Manor*, 300 NLRB 1040 fn. 2 (1990); and *J.P. Murray Food Service, Inc.*, 327 NLRB No. 149 fn. 1 (1999) (not reported in Board volumes).

the Respondent and PACE, effective from August 13, 1993 to February 1, 1998, and extended by written agreement of the parties until June 1, 1999.

(b) At all times material herein until around June 11, 1999, the following employees of the Respondent, herein called the Firemen and Oilers unit, constituted a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Certain employees at the Deferiet Paper Mill as described in Section 4.1 of the collective-bargaining agreement between Respondent and the Firemen and Oilers, effective from August 13, 1993 to February 1, 1998, and extended by written agreement of the parties until June 1, 1999.

4. The Respondent has violated Section 8(a)(5) and (1) of the Act by: since about May 11, 1999, failing to give PACE and the Firemen and Oilers an opportunity to bargain over the effects on employees in the PACE and Firemen and Oilers units of its decision to sell the Deferiet paper mill; on about May 11 unilaterally implementing preconditions for obtaining severance pay for employees in the PACE and Firemen & Oilers units; on about May 11 engaging in direct dealing concerning preconditions for obtaining severance pay with employees in the PACE and Firemen & Oilers units; and on about June 11 unilaterally failing and refusing to pay employees in the PACE unit earned vacation pay pursuant to Section 17 of the PACE collective-bargaining agreement.

5. The unfair labor practices described above are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[34]

ORDER

The Respondent, Champion International Corporation, Stamford, Connecticut, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with Paper, Allied-Industrial, Chemical & Energy Workers International Union, and its affiliated Locals 45 & 56 (herein PACE), and National Conference of Firemen & Oilers/S.E.I.U. International Union and its affiliated Local 349 (herein Firemen and Oilers), concerning the effects on employees represented by PACE and Firemen & Oilers of its decision to sell the Deferiet mill and terminate its employees.

(b) Unilaterally implementing preconditions for obtaining severance pay for employees in the PACE and the Firemen and Oilers bargaining units.

(c) Engaging in direct dealing concerning preconditions for obtaining severance pay for employees in the PACE and the Firemen and Oilers bargaining units.

(d) Failing and refusing to pay employees in the PACE bargaining unit earned vacation pay pursuant to Section 17 of the PACE collective-bargaining agreement.

(e) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively in good faith with PACE and Firemen & Oilers as to the employees represented by these unions in the collective-bargaining units described in their most recent contracts with the Respondent at the Deferiet mill concerning the effects on those employees of its decision to sell the Deferiet mill and to terminate its employees, and, if an understanding is reached, embody it in a signed document.

(b) Pay the former employees in the PACE and Firemen & Oilers units their normal wages when in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Unions on those subjects pertaining to the effects of the sale of its Deferiet mill; (2) the date a bona fide impasse in bargaining occurs; (3) the Unions' failure to request bargaining within 5 business days after receipt of this Decision, or to commence negotiations within 5 business days after receipt of the Respondent's notice of desire to bargain with the Unions; (4) the Unions' subsequent failure to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount he or she would have earned as wages from the June 11, 1999, when the employee was terminated by the Respondent as a result of its sale of the Deferiet mill and the cessation of its operations, to the time he or she secured equivalent employment elsewhere; provided, however, that in no event, shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy portion of this decision.

(c) On request by the Unions, rescind the preconditions for obtaining severance pay unilaterally instituted on May 11, 1999.

(d) Make whole those employees hired by Deferiet Paper Company who had worked for the Respondent in the PACE unit by the payment of interest, as set forth in the remedy portion of this decision, on the amounts of vacation pay accrued and owing those employees by the Respondent as of June 12, 1999, until the time of the payment of the moneys to the employees by the Deferiet Paper Company, and make whole as specified in the remedy section of this decision any employee who was not paid vacation pay by the Respondent or the Deferiet Paper Company for vacation pay owed by the Respondent as of June 12, 1999.

(e) Preserve and, within 14 days of a request, provide at the office designated by the Board or its agents, a copy of all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the

[34] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

terms of this Order. If requested, the originals of such records shall be provided to the Board or its agents in the same manner.

(f) Within 14 days after service by the Region sign and mail copies, at the Respondent's expense, of the attached notice marked "Appendix"[35] to all employees represented by PACE and Firemen & Oilers who were in the Respondent's employ in the month of June 1999, to their last known address; and similarly sign and mail copies of the notice to the PACE and its affiliated locals 45 and 56 and to the Firemen and Oilers Union and its affiliated locals 349 at their business addresses.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

This notice has been mailed to the Paper, Allied-Industrial, Chemical & Energy Workers International Union, and its affiliated Locals 45 & 56 (herein PACE), and the National Conference of Firemen & Oilers/S.E.I.U. International Union and its affiliated Local 349 (herein Firemen and Oilers), and to all employees represented by those Unions under their most recent collective-bargaining agreements with Champion International Corporation at the Deferiet Paper Mill who were employed by Champion International Corporation at the mill during the month of June 1999.

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to mail this notice to our former employees as described above and to abide by its terms.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

An Employer subject to the National Labor Relations Act must collectively bargain with the labor organizations that represent its employees concerning wages, hours, and working conditions, including the effects on those employees that the unions represent of the Employer's decision to sell one of its facilities.

WE WILL NOT fail to bargain in good faith with PACE and the Firemen and Oilers concerning the effects on employees represented by those Unions at the Deferiet mill of our decision to sell the Deferiet mill and terminate its employees.

WE WILL NOT unilaterally implement preconditions for obtaining severance pay for employees in the collective-bargaining units represented by PACE and the Firemen and Oilers at the Deferiet mill.

WE WILL NOT engage in direct dealing about preconditions for obtaining severance pay with employees in the collective-bargaining units represented by PACE and the Firemen and Oilers at the Deferiet mill.

WE WILL NOT fail and refuse to pay employees in the PACE collective-bargaining unit at the Deferiet mill earned vacation pay pursuant to section 17 of our collective-bargaining agreement with PACE.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL, on request, bargain collectively in good faith with PACE and Firemen & Oilers with respect to the effects on PACE and Firemen & Oilers unit employees of our decision to sell the Deferiet mill and terminate its employees.

WE WILL, on request, rescind the preconditions for obtaining severance pay unilaterally instituted on May 11, 1999.

WE WILL pay backpay to the former employees represented by PACE and Firemen & Oilers in the collective-bargaining units at the Deferiet mill who were employed at the time of our sale of the Deferiet mill, their normal wages, with interest, in the manner and for a period set forth in the decision underlying this notice to employees as a result of our refusal to bargain in good faith with those unions about the effects on employees of the sale of the Deferiet mill.

WE WILL make whole those employees hired by Deferiet Paper Company who had worked for Champion International Corporation in the PACE Deferiet unit by the payment of interest, as set forth in the remedy portion of the decision underlying this notice to employees, on the amounts of vacation pay accrued and owing those employees by Champion International Corporation as of June 12, 1999, until the time of the payment of these moneys to the employees by the Deferiet Paper Company, and by paying vacation pay and interest to any employees in the PACE Deferiet unit who were not paid vacation pay by Champion International Corporation or the Deferiet Paper Company for vacation pay owed by Champion International Corporation as of June 12, 1999.

CHAMPION INTERNATIONAL CORPORATION

[35] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."